



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/113/2023 –CBS

आदेश दिनांक/Date of Order: 26.04.2024

CAO No. 04/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 26.04.2024

संख्या:

DIN : 20240479OC000000A5E6

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. :**

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

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

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

17. 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 क्षेत्री यखंडपीठ, 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.

18. 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.

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

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

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

21. 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. SeaKing Clearing Pvt. Ltd. (11/471), (PAN: AAACS5248M) (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/471, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and having registered office at 1<sup>st</sup> floor, Shree Sai Hanuman Mandir, near Air Cargo Complex, SutarPakadi, Sahar Village, Andheri (E), Mumbai-400 009.

2. On the basis of specific information received by DRI, MZU, investigation was conducted, which revealed that various export firm including M/s World Wide Export were procuring fake purchase bills from one Mr. Suhel Ansari, through fake firms floated by him against their export consignments.

3. An offence report in the form of SCN No. 35/Adj(X)/ADC/2022-23 dtd 15.11.2022 issued by Additional Commissioner of Customs, Export Assessment, ACC was received wherein it was mentioned that the exporter M/s World Wide Export was procuring fake purchase bills against their export consignments using fake & bogus bills of supplies received from one Mr Suhel Ansari.

4. The office premises of Shri Suhel Ansari, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonic, 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 investigations, statement of Shri Suhel Parvez Ansari and his employee Shri Shaikh Mohammed Arshad was 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 World Wide Export.

6. DRI, MZU, Mumbai forwarded the case to SIIB(X) /ACC for carrying out further investigation along-with the details of exporters including M/s World Wide Export who have claimed undue drawback by overvaluing the exports, whereas Cheaper material is exported, and to justify the value of the goods, fake invoices from Shri Suhel Ansari, are procured showing higher purchase price.

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

**7.1** Shri Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export vide his statement dated 09.03.2022 stated that:

- a) M/s. World Wide Exporters is merchant exporter & it is a partnership firm in which he and his wife Smt. Ajab Moiz Ahmedali Angoothiwala are partners but his wife is a house-wife so only he looks after the all work.
- b) Their export firm used to purchase goods from local market and complete the orders. Thereafter, they prepared packing list and invoice and handed over it to CB and Forwarding Agency for filing the shipping bill.
- c) In the present case, they had given authorisation to CB, but they didn't remember the names of the CBs but they took help from local freight forwarders who handled the documentation and further necessary procedures. Further, the CB raised the invoice containing both freight and clearance charges & the payment was made through cheque.
- d) On being asked about whether any CB/ Freight Forwarders carried out address verification of M/s. World Wide Exporter, he said physically no one came to verify the address.
- e) On being asked upon the transportation of the goods, he said that they used to send goods directly to ACC by tempo as they did not have any warehouse.
- f) On being asked about the procurement of the goods, he inter-alia stated that imitation jewellery exported were supplied by different Karigars located in the suburbs of Mumbai, as well as Jodhpur, Delhi, Agra, Rajkot etc. Further, he added that as these were small karigars, they only provided "Kaccha Bill" and were not able to provide proper invoices as they were not registered with Excise authorities.
- g) On being asked about Suhel Parvez Mohammed Sharif Ansari and whether he supplied any invoices, he replied that he did not know this person by name as there are aliases for the people in the market so he might not knew his actual name. He further added that he had not received any invoices from the said person directly. Further, he added that he might have received the invoices, it might have come through third party.

**7.2** Shri Jetil Rajgopal Thottupura, Director of M/s. Seaking Clearing Pvt. Ltd vide his statement dated 25.04.2022 inter-alia stated that:

- a) The CB firm M/s Seaking Clearing Pvt. Ltd. (11/471) has total 05 directors (including him) and he looks after the marketing, customs clearance work, logistics and handling of export-import shipments of the company.
- b) The CB firm had handled only one shipment of M/s World Wide Export in 2015 and the firm had filed free Shipping Bill No. 4709543 dated 15.12.2015 for the clearance of Imitation Jewellery. Further, LEO of the said SB was granted on 15.12.2015 but no export incentive was claimed by the exporter.

- c) Though LEO of the said SB was granted on 15.12.2015, the exporter requested to keep the consignment on hold due to some port issue. On exporter's request, the CB firm completed Back to Town procedure from ACC, Mumbai. Later, the said consignment was exported through JNCH.
- d) The exporting firm M/s World Wide Export authorised their CB firm M/s Seaking Clearing Pvt. Ltd. vide letter dated 14.12.2015 to carry out the custom clearing work on their behalf.
- e) Since exporter had already exported several consignments, they did not carry out first time export verification.
- f) Their firm used to verify the correctness of the classification and if there was any requirement/query by the Customs Department, the same was forwarded to the exporter through mail or telephonically to reply at their end.

8. During investigation, DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs.

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

10. 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.

Exporter in his statement has also stated that he does not have any manufacturing unit & he also failed to submit such documents like invoices containing details of its manufacturing, production, using imported material or excisable material therein, 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.

11. From investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai, it appears that M/s World Wide Export 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.

12. 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 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 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 firm has failed to discharge his duties efficiently as the exporter claimed undue drawback by mis-declaring the value of the goods by submitting fake invoices. The CB appears to have connived with the exporter. Further, the foreign remittance of the said SB has also not been realized till date which indicates clear lapse on the part of the CB. Thus it appears that the CB has violated the provision of Regulation 10(m) of the CBLR, 2018.
- d) The exporter Sh Moize Ahmed Ali Angoothiwala partner of M/s World Wide Export in his statement dated 09.03.2022 stated that physically no one came for the verification of the address. Thus, it appears that the CB failed to oblige his responsibilities mentioned as under 10(n) of CBLR, 2018 and violated the said regulation.

13. In view of the above facts, it is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. By their acts of omission and commission, it appears that the said CB has violated Regulation 10(d), 10(e), 10(m) & 10(n) of

the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

**14. Legal Provision of the CBLR, 2018:-**

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

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

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

**Regulation 10 (n) of the 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".

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

In pursuance of the offence report received in the export of M/s World Wide Export, the concerned CB M/s SeaKing Clearing Pvt. Ltd. has filed only 01 Sb of the said exporter (with NIL export benefit) which was further taken Back to Town. Considering the fact that no exports was effected in the said case, the license of the CB was not suspended and only inquiry proceedings were carried out.

**16. Show Cause Notice:**

Inquiry proceedings were initiated against CB firm M/s. SeaKing Clearing Pvt Ltd (CB No.11/471) vide Show Cause Notice No. 45/2022-23 dated 13.03.2023 issued under Regulation 17 of CBLR 2018 and vide the said notice, CB M/s. SeaKing Clearing Pvt Ltd (CB No.11/471) were called upon to show cause as to why the licence bearing no. 11/471 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 Shri Jagdish Bhenwal, Dy. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under regulation 17 of CBLR, 2018.

## **17. INQUIRY REPORT:**

Inquiry officer submitted Inquiry report dated 16.11.2023 wherein the charges against the said CB M/s Seaking Clearing Pvt Ltd in respect of violation of Regulation 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018 were held as "Not Proved".

### **17.1 Details of Personal Hearing:**

IO submitted that, CB filed written 'reply in defence' along with relevant documents pertaining to 'founding case' on 13.04.2023 to the Inquiry Officer.

IO further submitted that CB M/s Seaking Clearing Pvt Ltd. appeared before him and attended personal hearing on 25.08.2023 in the subject SCN / Inquiry through Shri Jetil R. Thottupura (Director) and Shri Pravin K Tiwari (employee of the CB) wherein they reiterated the contents of the letter dated 13.04.2023 and requested to drop the proceedings as drawback has not been claimed by the exporter as it was a free SB.

### **17.2 Written Submissions by Customs Broker:**

IO submitted, that the CB submitted written submission vide letter dated 13.04.2023 & submitted the following submission in his defence:

- a. The CB firm filed only one Shipping Bill of the said exporter and the said Shipping Bill No. 4709543 dt. 15.12.2015 was filed for export of imitation jewellery. Further, the said Shipping Bill was a free Shipping Bill and no incentive whatsoever was claimed by the exporter.
- b. The said Shipping Bill was further cancelled & allowed back to town after completing the procedure from ACC, Mumbai.
- c. The SCN is barred by limitation as the Shipping Bills pertains to the year 2015 and the SCN has been issued in the years 2023 which is after a period of 8 years. In this Context we rely 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
- d. Further, the investigations by DRI with the Consulate General of India, Dubai, UAE is not applicable in the present case as the goods were not exported and no benefits were claimed by the exporter.



e. As far as the charge of violation of regulations 10(d), 10(e), 10(m) & 10(n) is concerned the CB makes the following submissions:

i. The Shipping Bill is filed as per the documents given by the exporter. The said documents are whether genuine or fake can not be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine. However, in the present case there was no claim of any incentive by the exporter and the Shipping Bill was cancelled and goods taken back to town. There was no loss of any revenue to the government. Hence, the allegation that the exporter declared incorrect value is neither legal nor proper. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

Further, The CB submitted that they rely in the case of Jaiswal Import Cargo Services Ltd versus Commissioner of Customs., New Delhi reported in 2019 (370)E.L.T.1366 (Tri. - Del.)

ii. The CB submitted that the required documents were given by the exporter and the Shipping Bill was filed after due verification & compliance of KYC. Further, the said SB was a free Shipping Bill and no incentive was claimed by the exporter. Therefore, the charge under Regulation 10(e) does not survive and merits to be withdrawn. In this regard, the CB firm has relied in the case of Baraskar Brothers versus Commr. of Cus. (General), Mumbai reported in 2013 (294) E.L.T. 415 (Tri. - Mumbai).

iii. The CB submitted that there is no complaint by the exporter or any other person wherein it has been reported that the processing of the Shipping Bill was delayed. All throughout the custom clearance procedure, the Shipping Bill was processed in time and without any delay. Therefore the said charge of regulation (m) of CBLR, 2018 fails and has to be withdrawn.

iv. In respect of the violation of regulation 10(n) of CBLR, 2018, the CB stated that the CB firm has done due diligence before the filing of the Shipping Bill. The CB has verified the IEC and complied with the KYC norm before filing of Shipping Bill. Therefore, the charge against the CB deserves to be set aside.

v. Further, the CB firm also rely in the case of Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T. 1074 (Tri. - Del.)

f. The CB craves leave to be heard in person before the case is finally

adjudicated and would like to cross-examine the following persons Shri. Suhel Parvez Ansari, Shri. Surya, Shri. Suryabhan Eknath Dhurphate, Shri. Karan Ashoklal Ranka Shri. Gunjal Gabaji Madhu and the Customs officers who assessed the Shipping Bills in this regard. We crave leave to file further reply after the cross examination and receipt of the relied upon documents.

### **17.3 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.*"

IO in his report has stated that the exporter was not having any warehouse and the goods were procured on fake and bogus invoices therefore, the department could not verify whether goods were duty paid or whether any duty had been suffered while manufacturing, producing and processing them.

Though, the documents required for filing the SB were provided by the exporter, the Customs Broker has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawback can be claimed by the exporter. Had the Customs Broker M/s. Seaking Clearing Pvt. Ltd. seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible.

It appears that the CB firm M/s. Seaking Clearing Pvt. Ltd. was actively connived with exporters in claiming undue Drawback and over valuing the export goods and mis-declaring in Shipping Bill. The Customs Broker M/s Seaking Clearing Pvt. Ltd. appears to have not advised 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.

But considering the fact that the CB has processed only 01 SB of this exporter and the said SB was free SB, so exports was not affected in this case, IO dropped the charge (alleged in the SCN) against the CB for violation of regulation 10(d) of CBLR, 2018.

Accordingly, IO held the charge alleging violation of Regulation 10 (d) of the CBLR, 2018 stands "Not Proved"

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

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

IO in his report stated that the impugned goods was of cheaper quality and to justify the over-pricing, fake invoice was procured through Mr Suhel Ansari. Further, it also appeared that Shri. Maize Ahmed Ali Angoothiwala and Smt. Ajab Maize Angoothiwala partners of M/s World Wide Export has made false and incorrect declaration with respect to value of the goods.

Had the exporter paid any duties in respect of processing, producing and manufacturing the goods, they would have provided the necessary documents with regard to duty payment of excise, customs and service tax duties. It is also unlikely that Customs Broker has been receiving goods based on fictitious Bills and he was not aware of the same.

IO further submitted that the Customs Broker has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawback can be claimed by the exporter. Had the Customs Broker M/s. Seaking Clearing Pvt. Ltd. seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible. Thus, the Customs Broker M/s Sea King Clearing Pvt. Ltd. failed to exercise due diligence and aided the exporter for availing the undue drawback by overvaluing the exports.

But considering the fact that the CB has processed only 01 SB of this exporter and the said SB was free SB, so exports was not affected in this case, IO dropped the charge (alleged in the SCN) against the CB for violation of regulation 10(e) of CBLR, 2018.

Accordingly, IO held the charge alleging violation of Regulation 10 (e) of the CBLR, 2018 stands "Not Proved".

**c) Article of Charge-I:- Violation of Regulation 10(m) of CBLR, 2018**

As per Regulation 10(m) of CBLR, 2018- '*A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.*'

IO in his report stated that CB Broker M/s Sea King Clearing Pvt. Ltd. have failed to discharge their duties with efficiently as they allegedly actively connived with exporters in claiming undue Drawback and over valuing the export goods in Shipping Bill. The foreign remittance of all the Shipping Bills filed using these IECs have not been realized till date through formal banking channel; even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the custom. **Thus, it appears that the CB has violated the provisions of Regulation 10 (m) of the CBLR, 2018.**

But considering the fact that the CB has processed only 01 SB of this exporter and the said SB was free SB, so exports was not affected in this case, IO dropped the charge (alleged in the SCN) against the CB for violation of regulation 10(m) of CBLR, 2018.

Accordingly, IO held the charge alleging violation of Regulation 10 (m) of the CBLR, 2018 stands "Not Proved".

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

As per Regulation 10(m) of CBLR, 2018- '*A Customs Broker shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information*'

IO in his report has stated that during the course of investigations, Shri. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export, in his statement recorded under section 108 of Custom Act, 1962 on 09.03.2022 inter alia admitted that physically no one came for verify the address. Thus, it appears that the Customs Broker, M/s Sea King Clearing Pvt. Ltd. did not verify the address of the exporter M/s. World Wide Export. Thus, appears that the CB has violated the provisions of Regulation 10 (n) of the CBLR, 2018.

But considering the fact that the CB has processed only 01 SB of this exporter and the said SB was free SB, so exports was not affected in this case, IO dropped the charge (alleged in the SCN) against the CB for violation of regulation 10(n) of CBLR, 2018.

Accordingly, IO held the charge alleging violation of Regulation 10 (n) of the CBLR, 2018 stands "Not Proved"

**18. Submission of the CB:**

The CB M/s Sea King Clearing Pvt. Ltd appeared in PH and produced submission evidences/documents in his defence. Brief of the same is as follows:

- i. The CB submitted that the CB filed one Shipping Bill being Shipping Bill

- No. 4709543 dt. 15.12.2015 for export of imitation jewelry. The said Shipping Bill was a free Shipping Bill and no incentive whatsoever was claimed by the exporter.
- ii. The said Shipping Bill was cancelled and allowed back to town which has been recorded in the statement dt. 25.04.2022 recorded under Section 108 of the Customs Act, 1962.
  - iii. The investigations by DRI with the Consulate General of India, Dubai, UAE is not applicable in the present case as the goods were not exported and no benefits were claimed by the exporter.
  - iv. As far as the charge of violation of regulations 10(d), 10(e), 10(m) and 10(n) is concerned the CB makes the following submissions:
    - a. In defence of violation of Regulation 10(d) of CBLR, 2018 CB submitted that the Shipping Bill was as filed as per the documents given by the exporter and the said documents were whether genuine or fake can not be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine. However, in the present case there was no claim of any incentive by the exporter and the Shipping Bill was cancelled and goods taken back to town. There was no loss of any revenue to the government. Hence, the allegation that the exporter declared incorrect value is neither legal nor proper. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.
    - b. In defence of violation of Regulation 10(e) of CBLR, 2018, CB submitted that documents were given by the exporter and after due verification compliance of KYC the Shipping Bill was filed. Further, the Shipping Bill was a free Shipping Bill and no incentive was claimed by the exporter. Therefore, the charge under Regulation 10(e) does not survive and merits to be withdrawn.
    - c. In defence of violation of Regulation 10(m) of CBLR, 2018 CB submitted that in the given case, there is no complaint by the exporter or any other person of processing the Shipping Bill without any delay. All throughout the Shipping Bill was processed in time and without any delay. Therefore, the said charge of regulation 10(m) of CBLR, 2018 fails and has to be withdrawn.
    - d. In defence of violation of Regulation 10(n) of CBLR, 2018 CB submitted that they have done due diligence before the filing of the Shipping Bill. The CB has verified the IEC and complied with the KYC norm before filing of Shipping Bill. Therefore, the charge against the CB deserves to be set aside.

- v. An inquiry was held and the inquiry officer was pleased to hear the noticee and vide inquiry report dated 16.11.2023, the inquiry officer was pleased to conclude that none of the charges levelled against the noticee has been proved.
- vi. CB further submitted that as the exports pertain to 2015, the SCN is barred by limitation as the said SCN was issued on 13.03.2023 which is after a period of 8 years. CB requested to withdraw/drop the SCN and operate the CB license (11/471).

## **19. Discussions & Finding:**

I have gone through the facts of the case, material evidence on record, Inquiry Report dated 16.11.2023 & CB Submission dated 12.01.2024 presented during personal hearing on 15.01.2024.

**19.1** I observe that the charges against the said CB is of violation of regulation 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018 made vide Show Cause Notice No. 45/2022-23 dated 13.03.2023.

The Inquiry Officer vide inquiry report dtd 16.11.2023 held all the charges of violation of regulation 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018 as "Not Proved".

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

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

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

I observe that the IO in its report discussed that the CB violated regulation 10(d) of CBLR, 2018 but considering that only 01 SB was processed by the CB the IO absolved CB from the charges of violation of Regulation 10(d) of CBLR, 2018.

From the records of the case, I observe that the exporter M/s. World Wide Export was a merchant exporter and was not registered under the erstwhile Central Excise Act, 1944. Further, they had purchased the goods from traders who were also not registered under the erstwhile Central Excise

Act, 1944. DRI, MZU, Mumbai investigated the case and found that goods of inferior quality were procured from local market without any invoice and to justify the value of the goods, the exporter M/s World Wide Export had procured fake and bogus invoices from Sh. Suhel Ansari.

Further, the CB argued that they had filed the Shipping Bills on the basis of the documents given by the exporter and the proper officers had not raised any objection while assessment, examination and giving LEO of the goods. Then, levelling the charges on the CB that they had not verified the value of the goods is neither proper nor legal. In this regard, 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 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, 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 10(d) of the CBLR, 2018.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein though the matter was different yet the ratio of judgement may be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that

*“a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested. The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House*

*Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provide are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods.”*

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

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

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 his report held that the violation of regulation 10(e) of CBLR, 2018 stands proved & from the investigations, it also appeared that Shri. Maize Ahmed Ali Angoothiwala and Smt. Ajab Maize Angoothiwala partners of M/s World Wide Export has made false and incorrect declaration with respect to value of the goods as the impugned goods were procured through fake invoices. But, considering only 01 SB was processed by the CB, IO absolved CB from the charges of violation of Regulation 10(e) of CBLR, 2018.

From facts of the case, I find that the Exporter indulge in over valuation of goods so as to claim undue export incentives. They tried to justify the value of goods by using fake invoices supplied by Shri Suhel Ansari. The fraudulent export was detected only by investigation by DRI, MZU.

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. The CB has been obligatory to exercise due diligence to ascertain the correctness of any information which they impart to exporter/importer in relation to cargo clearances. In the instant case, I observe that the CB had acted in very callous and negligent way. Shri Moize Ahmed Ali Angoothiwala, partner of M/s World



Wide Export in his statement dated 09.03.2022 was unable to provide details of the CB and further informed that documentation and handling of cargo was done by local freight forwarder.

In view of the above, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

### **19.2.3 With regard to violation of Regulation 10(m) of CBLR, 2018**

The said regulation 10(m) of CBLR, 2018 reads as: -"A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay".

I observe that the IO in his report has held the violation of regulation 10(m) of the CBLR, 2018 as not proved. I also observe that there is nothing on record which proves that the CB's conduct in respect of said export clearance has led to delay and inefficiency. Thus, I am inclined to agree with the findings of the IO and hold that the **the CB has not violated the provisions of Regulation 10(m) of the CBLR, 2018.**

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

The said regulation 10(n) of CBLR, 2018 reads as: -""A Customs Broker shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information".

I find that the inquiry officer in his report held that during the course of investigations, the Customs Broker, M/s Sea King Clearing Pvt. Ltd. did not verify the address of the exporter M/s. World Wide Export and thus the CB has violated the provisions of Regulation 10 (n) of the CBLR, 2018. But considering only 01 SB was processed by the CB, IO absolved CB from the charges of violation of Regulation 10(n) of CBLR, 2018.

I observe that Shri. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export, in his statement recorded under section 108 of Custom Act, 1962 on 09.03.2022 inter alia admitted that physically no one came to verify the address. Further, he stated that the documentation and other procedure related to export consignment was done by local freight forwarder. The CB also during the entire investigation failed to submit any documentary proof to substantiate that they have complied with the obligation of regulation 10(n) of the CBLR, 2018.

From plain reading of the provision of regulation 10(n), it is clear that the said regulation cast a very important obligation on the CB to know his customer by using reliable means and also to verify the identity of his client and working

of his client at the declared address by using reliable and independent and authentic documents and information. The CB has neglected the said obligations which is amply proved from exporter's statement. Shri Jetil Rajgopal Thottupura, Director of M/s. Seaking Clearing Pvt. Ltd vide his statement dated 25.04.2022 inter-alia stated that 'since exporter had already exported several consignments, they did not carry out first time export verification'.

Thus, it is very clear from the records that the CB failed miserably to verify even the basic requirements of knowing who is his actual client, and has of course not done any elaborate verification of his client and has not verified the business premises of the exporter.

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

**20.** I have gone through the various case laws submitted by the CB in their defence. However, as the facts of the said case laws are different from the instant matter the ratio of judgment is not squarely applicable.

**21.** 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.*

**22.** The CB argued that Shipping Bill pertains to the year 2015 and the SCN has been issued on 15.03.2023 which is after a period of 8 years and thus such investigation is barred by limitation. In this regard, I observe that the matter was under investigation stage and Show Cause Notice on the issue was issued on dated 15.11.2022 by the Additional Commissioner, Export Assessment, Air Cargo Complex. The investigation against the CB was started on receiving of said SCN in the office on dated 24.11.2022. Under the CBLR, 2018 the timelines to

start inquiry and others is computed from the date of receipt of the offence report only. Further, there are plethora of judgements which have pronounced that these guidelines are directory but not mandatory. In this regard, 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.*

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

**23.1** 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)".*

**23.2** 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.

**23.3** 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."*

**24.** 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.

**25.** 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. Seaking Clearing Pvt. Ltd (11/471) 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(n) of CBLR, 2018 and is liable for penal action. I also drop the charges levelled against CB under Regulation 10(m) of CBLR, 2018. Accordingly, I pass the following order.

### **ORDER**

**26.** 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. 11/471) 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.

(ii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s Seaking Clearing Pvt. Ltd (11/471) (PAN – AAACS5248M) under Regulation 18 of the CBLR, 2018.

(iii) 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.

26/4/2021

(SUNIL JAIN)

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

To,

M/s. Seaking Clearing Pvt. Ltd. (PAN: AAACS5248M)  
Office No. 4, 1st Floor, Shree Sai Hanuman Mandir,  
Near Air Cargo Complex, Sutar Pakadi,  
Sahar Village, Andheri (East), Mumbai – 400 099.

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 (Admin)