



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/448/2023/CBS

आदेश दिनांक/Date of Order: 29.04.2024

CAO No. 06/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 29.04.2024

संख्या:

DIN : 20240479OC000000A5E6

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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9. 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, यथोत्तराधिकार में स्वीकार्य है।

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

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

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

11. 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.

12. 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.

13. (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.

14. 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. Vardhaman C and F Solution Pvt Ltd (PAN No. AAICV4738P), having registered address at 3RD Floor Office No. 11/236-238, Mukti Chaitanya, Hajrat Abbas Road, Masjid, West Mandvi Mumbai City, Maharashtra-400003 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1755, issued by the Commissioner of Customs, Mumbai under Regulation 9(1) of CHALR, 2004, (Now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report (Investigation Report along with RUDs) dated 12.08.2023 with respect to the role of the CB M/s Vardhman C and F Solution Pvt Ltd (11/1755) was received vide File No. No. SG/Misc-525/2022-23/CIU JNCH from the Deputy Commissioner of Customs, CIU, JNCH, wherein it was informed that the importer M/s. Isha Impex (IEC-CXNPS0358B) made fraudulent imports in contravention to the provisions of the Customs Act, 1962, through JNCH, Raigad, with the help of the Customs Broker, M/s. Vardhaman C and F Solution Pvt Ltd (11/1755).

3. The Investigation Report revealed that the Importer, M/s. Isha Impex, filed three Bills of Entry (Bs/E) No. 3830116, 3830216 & 3830343 all dated 25.12.2022 at Jawaharlal Nehru Customs House, Raigad for importation of the goods described as "LED Lamp, Torch light with charger" imported from China and contained in three 40' container (details mentioned in Table I)

TABLE-I

B. E. / date	Container No	Assessed Value (In Rs.)	Assessed Duty (In Rs.)
3830116/25.12.2022	SKHU9922686	1092834	318064
3830216/25.12.2022	TGBU5676040	1320132	384760
3830343/25.12.2022	SEGU6340579	1092488	310720

4. The goods covered under said 03 BEs were 100% examined by the officers of CIU, JNCH under Panchanama dated 11.01.2023 and 16.01.2023. During examination, following observations were made:

- It was found that the word "AKARI" was written on the products but not on the Bill of Entry.
- Further, The BIS certificate was uploaded in E-Sanchit and it was observed that the brand was clearly mentioned in the BIS certificate with R number 41149063 but in the packing list, only Model No. was mentioned.
- During examination, plastic rechargeable torch light with charger were found (as declared in the packing list). The goods were found with BIS registration mark R-81007064. The details of BIS registration R-81007064 is as follows:

R-NUMBER	R-81007064
Name of manufacturer	SURYA ELECTRONICS

Address of manufacturer	C-19A, GALI NO-2, JAGAT PURI EXTN, NAND NAGRI, SHAHDARA, NORTH EAST DELHI
Product Name	POWER ADAPTORS FOR IT EQUIPMENT
IS Number	IS 13252(PART 1):2010/ IEC 60950-1 : 2005

From the above, it is clear that the product which has been registered with BIS is "POWER ADAPTORS FOR IT EQUIPMENT" whereas in the given case, the goods (rechargeable torch light with charger) have been imported from China, and the importer has submitted BIS Certificate of an Indian Company which is completely wrong.

5. The goods imported vide said BEs appeared to be under-valued. The declared assessable value of the goods was Rs. Rs.35,05,454/- (Thirty five lakhs five thousand four hundred fifty four only). During investigation, it was found that the valuation provided was liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007. Therefore, value of the goods were re-determined by the officers of CIU JNCH, under rule 09 of the CVR 2007 as rule 04 to 08 was not found to be suitable in this case.

6. To re-determine the correctness of declared value, officers of the investigating agency conducted a market survey on 25.03.2023 in presence of Shri Ramniwas Surendra Prasad, employee of CB Firm M/s. Vardhaman C and F Solution Pvt. Ltd.

6.1 Declared value of the Goods in the consignment imported vide the above Bills of Entry and the re-determined value after-market enquiry is mentioned below in Table-II.

TABLE-II

BE No & Date	Declared Assessable Value (in Rs.)	Re-determined Assessable value (in Rs)	Duty Payable on declared (in Rs.)	Duty Payable as per re-determined Value (in Rs.)	Difference in Assessable Value (in Rs.)	Differential duty (in Rs.)
3830116/ 25.12.2022	1092834	2379840	318064	660049	1287006	341985
3830216/ 25.12.2022	1320132	3281320	384760	910074	1961188	525314
3830343/ 25.12.2022	1092488	2423552	310720	672172	1331064	361452

7. During the course of investigation by CIU, JNCH, statements of following persons were recorded under section 108 of the Customs Act, 1962.

7.1 The voluntary statement of. Shri Vikram P Ranka, Authorised representative (Manager) of M/s. ISHA Impex (IEC-CXNPS0358B) was recorded on 28.04.2023 w.r.t these 03 B/Es wherein he inter-alia stated that:

- He is the Manager of M/s. Isha Impex (IEC-CXNPS0358B) & handles the import of the company.
- The company was formed on 29.04.2021 & he joined the company on 2022.

- iii. They normally import Emergency Torch, Emergency Light, Decorative items etc. at Chennai and JNCH & approximately 20-25 consignment were imported during the past 1 – 1 ½ years.
- iv. He came in contact with the Suppliers on the Make in China website & used to give orders to their suppliers on we-chat and e-mail.
- v. On being asked about the status of the goods of said BEs, he stated that they had placed an order (via email) for the goods from China and the same was put on hold by CIU. Further, he agreed with the copies of panchanama dtd. 11.01.2023 and 16.01.2023.
- vi. On being asked regarding the brand AKARI, he stated that it was not a major brand, this is a Chinese brand. As the same is not a reputed brand, they did not declare it. They shall declare the same in the future.
- vii. He agreed with the copies of panchanama dtd. 11.01.2023 and 16.01.2023 & also agreed with the market survey reports dtd. 25.03.2023.
- viii. He had WPC and BIS certificates and submitted the same.
- ix. On being asked about the submission of wrong BIS Certificate i.e. of an Indian Company, he stated that this is their first consignment of Torch with Charger and they were unaware of the BIS requirement on the same. Their Shipper gave them chargers with Indian BIS and they declared the same.
- x. This may be treated as their mistake and again requested to take lenient view. They have applied for the BIS certificate for the same.
- xi. He was not aware of the misdeclaration in the consignment till the time of examination of the goods.
- xii. He further accepted the mistake of not declaring the brand of the other goods and requested to take a lenient view as this was his first mistake.

7.2 Further, voluntary statement of Shri Ramanivas Surendra Prasad Shukla, G-Card holder (4477/2022) in Custom Broker M/s Vardhaman C and F Solution Pvt. Ltd. (Licence No. 11/1755) was recorded on 15.06.2023 in this case wherein he inter-alia stated that:

- i. Their CB company has been handling custom clearance related work of the importer since last one and half year & they have cleared 30-40 consignments and 03 are pending for clearance due to undergoing investigation.
- ii. The documents related to the consignment like invoice, packing list or any other relevant documents are submitted by the importer. On basis of these documents, they check importation criteria. If it is a first time import, then they verify their KYC by verifying their office.
- iii. Importer M/s Isha Impex gave them Invoice, Packing, Bill of Lading and Country of Origin etc. on e-mail.
- iv. On being asked about the non-declaration of brand in the Bill of Entry, he stated that the order was being placed by the Importer so only the Importer may be knowing the same. They do not know anything about the same as

they filed the BE on the basis of documents and details provided by the Importer only.

- v. They regularly clear M/s Isha Impex consignment and they usually involve BIS certificates. In this consignment there are two BIS certificates, M/s Isha Impex while providing the documents had provided them with the BIS and also they had filed the Bill of Entry with the wrong BIS due to oversight.
- vi. He agreed that the CB firm filed Bill of Entry with the wrong BIS due to oversight.
- vii. He agreed with the Market Survey.

8. On perusal of the offence report, it appears that:

- a) As per the requirement of the Section 46 of the Customs Act, 1962, importer has to make correct declaration while presenting B/E and compliance with the restriction/prohibition relating to the goods. But in this case of The CB failed to advise his client i.e. importer to comply with the above said provisions of the Act, other allied acts and the rules & regulations thereof as the importer and the CB 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 importer M/s Isha Impex imported goods from China and during examination, plastic rechargeable torch light with charger were found (as declared in the packing list). The goods were found with BIS registration mark R-81007064 but when the BIS license was verified, it came to know that the BIS is registered with an Indian company named Surya Electronics. This indicate that the importer failed to upload authentic BIS and the CB firm also did not exercise due diligence to ascertain the authenticity of the BIS Certificate. Thus, the CB appears to have violated Regulation 10(e) of CBLR, 2018.
- c) The CB in this case has not discharged his duties as per the mandated regulation 10(m) of CBLR, 2018 which states that CB has to discharge his duties with utmost speed and efficiency and without delay. The CB failed to verify the authenticity of the BIS certificate and did not seek necessary clarification from the importer regarding the impugned goods which shows the negligence on part of the CB in discharging his duties as CB. Thus CB has violated the provision of Regulation 10(m) of the CBLR, 2018.

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

10. Legal Provision of the CBLR, 2018:-

10.1 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;"

10.2 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;"

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

11. Show Cause Notice:

On receipt of the aforesaid Offence Report & considering the violations of the CBLR, 2018 a Show Cause Notice (SCN) No. 24/2023-24 dated 13.03.2023 under Regulation 17 of CBLR 2018 was issued to CB M/s. Vardhman C and F Solution Pvt Ltd (11/1755) and inquiry proceedings were initiated against the said CB. Vide the said Show Cause Notice the CB were called upon to explain as to why the licence bearing no. 11/1755 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

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

12. INQUIRY REPORT:

Inquiry officer submitted Inquiry report dated 26.12.2023 wherein the charges against the said CB M/s Vardhman C and F Solution Pvt Ltd (11/1755) in respect of violation of Regulation 10(d), 10(e) & 10(m) of CBLR, 2018 were held as "Proved beyond doubt".

12.1 Details of Personal Hearing:

12.1.1 In the report, the Inquiry officer has stated that the CB was granted personal hearing on 08.11.2023 wherein they reiterated the submission made in their letter dated 19.10.2023.

12.2 Written Submission of the Customs Broker before Inquiry officer: The CB vide their written submission dated 19.10.2023 filed their defence wherein they denied the charges framed against them in the Show Cause Notice (SCN) No. 24/2023-24 dated 13.03.2023.

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

- a. The role of a Customs Broker is limited to submitting information provided by the importer to customs in the form of the Bill of Entry. Subsequently, the Customs Appraiser rechecks all parameters and assesses It.
- b. In terms of valuation, it is a contract between the buyer and seller for which the importer and exporter are wholly responsible, and the Customs Broker has no involvement in it.
- c. The allegation by the department for connivance of the CB for such undervaluation baseless and lacks factual evidence.
- d. Therefore, the allegation under Regulation 10(d) is not sustainable and should be dropped.

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

- a. A Customs Broker is primarily responsible to the Government of India and is duty-bound to safeguard government revenue.
- b. Due diligence is always exercised to ensure the correctness of any documentary information provided by their clients for any work related to the clearance of cargo.
- c. In this case as well, they have diligently carried out their responsibilities.
- d. This charge should be dropped.

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

- a. The demanding nature of the job, the pressure from both the department and clients, can lead to oversights and errors.
- b. These errors or omissions are not intentional but a result of staff oversight.
- c. This can be condoned, and they have already taken corrective actions to prevent such mistakes in the future.
- d. This charge should also be dropped.

12.2.4 The CB also submitted that:

- a. Above charges are Inherent to the customs clearance process and do not represent serious violations that warrant jeopardizing the livelihoods of individuals' dependent on a Customs Broker.
- b. Customs Brokers are an integral part of the Customs department and work alongside departmental officers toward the common goals of revenue protection and collection.
- c. Errors and omissions are bound to occur during the clearing process and have not been committed with malicious Intent or for personal gain.
- d. If there were any lapses on their part, they are open to rectifying them and taking any necessary corrective actions.

12.3 Comments of the Inquiry Officer:

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

- i. As per section 46 of the Custom Act 1962, it is responsibility of the Importer who presents a B/E shall ensure the following:
 - a. The accuracy and completeness of the information given therein
 - b. The authenticity and validity of any document supporting it; and
 - c. Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

In this case the said Customs Broker failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, as:

- a. Declared value of the goods are far to less than the re-determined assessed value by the investing agency to the tune of declared value Rs. 3505454/- (Thirty-five lakhs five thousand four hundred fifty-four only) whereas re-determined assessed value Rs 8084712/-Eighty lakhs eighty-four thousand seven hundred twelve only) and the same has been accepted by the said importer as per the importers statement dated 28.04.2023.
- b. Correctness of the BIS certificate was not ensured
- c. They failed to declare brand name of the product (AKARI).
- ii. On the basis of the above, the IO held the Article of Charge of violation of Regulation 10(d) of the CBLR, 2018 as 'proved beyond doubt'.

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

- i. CB failed to caution their client that uploading an unauthentic BIS certificate and undervaluation of the goods may lead to non-clearance of Cargo.
- ii. They also not paid due diligence regarding authenticity of the BIS certificate.
- iii. On the basis of the above, the IO held the Article of Charge of violation of Regulation 10(e) of the CBLR, 2018 as 'proved beyond doubt'.

12.3.3 Article of Charge-III :- Violation of Regulation 10(m) of CBLR, 2018: The IO in his report held that:

- i. CB failed to upload the correct documents viz. BIS certificates and did not seek necessary clarifications from the said importer about the impugned goods which shows not only inefficiency in Customs Broker's part but also resulted substantial delay in clearance of goods.
- ii. On the basis of the above, the IO held the Article of Charge of violation of Regulation 10(m) of the CBLR, 2018 as 'proved beyond doubt'.

13. Personal Hearing & Written submission after completion of inquiry proceedings: A personal hearing was granted to the CB on 05.03.2024. Shri Sanjay Singhal, Advocate and Shri Praveen Tripathi, Director of the CB M/s Vardhaman C and F Solution Pvt. Ltd (11/1755) appeared for personal hearing wherein they submitted a written submission dated 05.03.2024 and reiterated the contents thereof. They requested to take a lenient view as this was their first offence.

13.1. Written submission dated 05.03.2024: Shri Sanjay Singhal, Advocate submitted a written submission dated 05.03.2024 on behalf of M/s Vardhaman C and F Solution Pvt. Ltd (11/1755) wherein he has inter-alia stated that:

- i. The Inquiry Authority is the same Deputy Commissioner of CIU (Central Intelligence Unit) JNCH, who had booked the case and made the investigations.
- ii. There is a violation of Principles of Natural Justice as the same person who has investigated the matter is appointed as Inquiry officer to examine the correctness of the charges or otherwise.
- iii. The proceedings are vitiated on account of the fact that the prosecutor and judge are one and the same.
- iv. **With regards to the violation of regulation 10(d):**
 - a. He submitted that there are a number of judicial pronouncements that the CB cannot be held responsible for valuation of the goods.
 - b. The valuation of the goods is a contract between the importer and the supplier and the correctness or otherwise of the same in terms of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is beyond the purview of the role envisaged for the CB in the said Rules.
 - c. When the import invoices themselves mentioned BIS certificates and the same BIS certificates were produced by the importer, the CB had no occasion to doubt the veracity or applicability of the same to the goods imported.
 - d. The CB could not have complete mastery over the allied acts such as the Bureau of Indian Standards Act and therefore, it was assumed that the said BIS certificate as mentioned in the import Invoice did cover the imported goods.
 - e. Unless the goods are examined, the CB is not in a position to know whether the goods are branded or unbranded.
 - f. There is not a whisper in the whole of the Inquiry Report findings that the noticee has advised the client not to follow the provisions of Customs Act, other allied Acts and Rules and Regulations thereof.
 - g. Unless there is an allegation and some kind of evidence to show that such advise has been rendered by the noticee, the allegation cannot be sustained.
 - h. A custom broker does not have the power or the wherewithal to verify the value of the imported goods nor is he empowered under the Customs Act or the Customs Broker Licensing Regulations, 2018 to do so.
 - i. When the foreign supplier himself has mentioned the BIS certificate number to cover the imported goods, the CB cannot be expected to verify whether the BIS certificate does really cover the imported goods or not.
 - j. The supplier manufacturer is in the best position to know whether any goods are covered by the BIS certificate or not.
 - k. The BIS certificate is issued to the foreign manufacturer or his Indian Representative or someone else is beyond the pale of duties expected out

of a Customs Broker in terms of the CBLR 2018. Therefore, the finding is without basis.

1. Both the invoice and packing list do not make any such declaration that the goods are of AKARI brand.
- m. The finding in respect of violation of Regulation 10(d) may kindly be rejected.

v. **With regards to the violation of regulation 10(e):**

- a. Invoice and Packing List showed the very same BIS Certificate and when the importer submitted the same, it was duly uploaded into e- sanchit.
- b. There is nothing to indicate that the importer was advised or pre-determined to submit any unauthentic BIS certificate for the goods.
- c. Unless the goods are examined, the CB cannot be expected to know that the goods were undervalued.
- d. The finding in respect of violation of Regulation 10 (e) may kindly be rejected.

vi. **With regards to the violation of regulation 10(m):**

- a. Documents and clarifications were submitted as and when received from the importer.
- b. Unless the BIS certificate is provided the same cannot be submitted besides, as regards the correctness of the same, the importer in his statement dated 16.05.2023 has also clarified that this was their first consignment that had been received with charger and they were unaware of the BIS requirements of the same.
- c. The importer himself, was unaware of the nature of the goods and the BIS certificate. Therefore, the CB acted in the best interests by seeking the certificate from them and submitted the same to customs.
- d. Noticee admits that they were not aware of the requirement that the BIS ought to be in name of foreign manufacturer and that was a lack of knowledge on their part but it was bona-fide error and not by design.
- e. Since the same BIS number was mentioned in the import documents, it was assumed that it covered the import goods and did not seek further clarification from the importer, which was an error in judgment on their part.
- f. The finding in respect of violation of Regulation 10 (m) may kindly be rejected.

14. Discussions & Finding:

I have gone through the case, material evidence on record, Inquiry Report dated 26.12.2023 & written and oral submission dated 05.03.2024.

14.1 I observe that the charges against the said CB is of violation of Regulation 10(d), 10(e) & 10(m) of the CBLR, 2018 made vide Show Cause Notice No. 24/2023-24 dated 13.03.2023. The Inquiry Officer vide inquiry report dated 26.12.2023 held all the charges of violation of Regulation 10(d), 10(e) & 10(m) of the CBLR, 2018 as "Proved beyond doubt".

14.2 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

14.2.1 With regard to violation of Regulation 10(d) of CBLR, 2018:

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

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

b. From the offence report, I find that the charged CB has filed the Bills of Entry (Bs/E) 3830116, 3830216 & 3830343 all dated 25.12.2022. During the examination by the CIU, JNCH the goods covered under the said Bs/E were found mis-declared w.r.t. the valuation of the goods and non-compliance of BIS requirement. The BIS mark with R number R-81007064 was found on the charger of Plastic Rechargeable torch light whereas the said BIS certificate was issued for Power Adaptor for IT equipment and was in the name of an Indian Company i.e. Surya Electronics. I note that these facts were not disputed by the CB during oral and in written submissions.

c. The IO in his report held that the charged CB failed to advise his client w.r.t. the correctness of value, BIS and declaration of brand name. Therefore, the necessary requirements of the Section 46 were not fulfilled in this case. Accordingly, the IO held that the charge of violation of regulation 10(d) is proved beyond doubt.

d. The CB vide written submission and during personal hearing contended that there is no evidence to establish that they have advised the importer for not to follow the relevant rules & regulations; there is no role of the CB for valuation of the imported goods; that the CB cannot be expected to verify whether the BIS certificate does really cover the imported goods or not; that imported goods were unbranded and the CB did not make any false declaration to the effect.

e. I observe that in the era of trade facilitation and where majority of the goods are RMS facilitated the CB has assumed a very important role with respect to the correct documentation and clearances of the import/export consignment. This role has been well defined in the form of various obligations as prescribed in the CBLR, 2018. Accordingly, the CB is duty bound to be aware of all the requirements and compliances required in respect of imported goods. Thus, I am of the considerate view that submission of the CB that they were not aware about relevant rules & regulation of the BIS does not merit acceptance and hence I reject the same.

f. I find that the Shri Ramanivas Surendra Prasad Shukla, G-Card holder of the Custom Broker M/s Vardhaman C and F Solution Pvt. Ltd, in his statement dated 15.06.2023, had admitted that they had filed Bill of Entry with the wrong BIS due to oversight. He has also stated that they regularly cleared the consignments of the said importer involving BIS Certificates.

g. From the fact, it is evident that the CB failed to advise his client i.e. importer regarding requirement of the proper BIS certification of imported goods and declaration

made in the Bills of Entry. The CB also failed to bring non-compliance to the notice of the Docks Assistant/Deputy Commissioner. The case was only detected by the investigation from CIU, JNCH otherwise the goods had been cleared without valid BIS certificate and thereby causing hazards to Indian Customers. The CB either knowingly filed the wrong BIS so as to get the goods cleared without proper documents or had acted in very negligent and callous manner. Hence, I am of the considerate view that the CB cannot shy away from the responsibilities & obligations cast upon them under regulation 10(d) of CBLR, 2018.

h. 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."

i. From the above facts and circumstances, **I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR. 2018.**

14.2.2 With regard to violation of Regulation 10(e) of CBLR, 2018:

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

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

b. I find that the inquiry officer in his report held that the violation of regulation 10(e) of CBLR, 2018 stands "proved beyond doubt".

c. The importer and Customs Broker during investigation has accepted the re-determined value. Further, the CB has admitted that they have filed Bills of Entry with wrong BIS due to oversight. This fact has not been retracted by the Customs Broker till date.

d. It is obligations 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. They made no effort to ascertain the value of goods despite having been in business for long with the same importer. They failed to advise the clients regarding the valuation of the imported goods and without verifying whether the goods are branded or unbranded, they simply filed 03 Bills of Entry with wrong documents. Thus, CB has failed in exercising due diligence in ascertaining the information of valuation of the imported goods and BIS compliance while filing the Bills of Entry and acted negligently in the clearance of the impugned consignments.

e. I observe that the CB is an important link between importer/exporter and the Customs authorities. The law mandates that the CB should be abreast with all the latest information/compliances regarding customs clearances and also to impart the knowledge to their client. In the era of trade facilitation, the law requires CB to be diligent in ascertaining the information which they impart to their client. Thus, I am of the considerate view that the CB cannot shy away from the responsibility cast upon them under regulation 10(e) of the CBLR, 2018 by stating that they uploaded the documents submitted by the importer and this is beyond their duties to verify to whom the BIS is issued.

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

14.2.3 With regard to violation of Regulation 10(m) of CBLR, 2018:

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

"Discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay."

b. I find that the inquiry officer in his report held that CB failed to upload the correct documents viz. BIS certificates and did not seek necessary clarifications from the said importer about the impugned goods which shows not only inefficiency in Customs Broker's part but also resulted substantial delay in clearance of goods. The inquiry officer held that the violation of regulation 10(m) of CBLR, 2018 stands "proved beyond doubt".

c. I find that the CB was regularly clearing the consignments of the said importer wherein the BIS compliances were mandatory. Even after continuous working in the same area, the CB was unaware about the correct BIS Certification required for the said imported goods. This indicate a clear failure on the part of the CB. Moreover, if the goods under the subject Bills of Entry were not undertaken for the investigation, the CB may have remained continued his work in such a careless and inefficient manner.

d. In view of the above, I find that the charged CB utterly failed to discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay. **Therefore, I hold that the CB has violated the provisions of Regulation 10(m) of the CBLR, 2018.**

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

15.1 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)".

15.2 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.

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

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

16. 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 clearance of the imported goods by mis-declaring the value & brand and without having the proper knowledge of BIS compliances & by using wrong BIS certificate. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

17. 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 Vardhman C and F Solution Pvt Ltd (11/1755) 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(m) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order:

ORDER

18. 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. 11/1755 is ordered to be revoked under 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 14 of the CBLR, 2018.
- iii. I, hereby impose penalty of Rs. 50,000/- (Rupees: Fifty Thousand Rupees Only) on M/s. Vardhaman C and F Solution Pvt Ltd (PAN No. AAICV4738P) under 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. Vardhaman C and F Solution Pvt Ltd,
3RD Floor Office No. 11/236-238, Mukti Chaitanya,
Hajrat Abbas Road, Masjid, West Mandvi Mumbai City,
Maharashtra-400003.

Copy to:

1. The Pr. Chief Commissioner / Chief Commissioner of Customs, Mumbai Customs Zone-I, II & III.
2. CIU, Mumbai Customs Zone-I, II & III.
3. EDI of Mumbai Customs Zone-I, II & III.
4. Brihanmumbai Customs Broker Association
5. Office copy
6. Notice Board

I hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of ... State of ...

The County of ... State of ...

I, the undersigned, being a duly qualified officer of the County of ... State of ... do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of ... State of ...

Witness my hand and seal of office this ... day of ... A.D. 19...

Handwritten signature
D. W. ...

For the County of ... State of ...

I, the undersigned, being a duly qualified officer of the County of ... State of ... do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of ... State of ...

Witness my hand and seal of office this ... day of ... A.D. 19...