CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86869 of 2021

(Arising out of Order-in-Original CAO No. 91/CAC/PCCI(G)/SJ/CBS(Adj.) dated 29.09.2021 passed by the Principal Commissioner of Customs (General), Mumbai)

M/s. SSS Sai Forwarders Pvt. Ltd. **Appellant**
A-305, Classique Center, Plot No.26,
Mahal Industrial Estate, Off Mahakali Caves Road,
Andheri (E), Mumbai 400 093.

Vs.

Commissioner of Customs (General), Mumbai Respondent
New Custom House, Ballard Estate, Mumbai 400 001.

Appearance:

Shri Aditya Tripathi, Advocate, for the Appellant
Shri Manoj Das, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: 01.03.2022
Date of Decision: 01.03.2022

FINAL ORDER NO. A/85384/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No 91/CAC/PCC(G)/SJ/CBS dated 29.09.2021 of the Principal Commissioner Customs (General), Mumbai. By the impugned order, the Principal Commissioner has held as follows:

"ORDER

1. 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) I hereby impose penalty of Rs. 50,000/-(Fifty Thousand Rupees Only) on M/s SSS Sai Forwarders Pvt. Ltd. (11/1830) (PAN No.: AALCS9818C) under Regulation 18 of the CBLR, 2018.

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

(iii) I revoke the CB Licence No. 11/1830 under Regulation 14 of CBLR, 2018.

(iv) I hereby order that the CB surrender the original Licence as well as all the 'F', 'G' & 'H' cards issued there under immediately.

2. This order is passed without prejudice to any other action which may 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."

2.1 On the basis of specific intelligence, Officers of Preventive Section, Customs (Prev.), HQ, Jamnagar seized consignments of Wall paper and similar wall covering consisting of paper coated or covered on the face side, Wall paper grained embossed coloured falling under CTH 48142000 lying at Container Freight Station of M/s. Contrans Logistics Pvt. Ltd. Pipavav in respect of exporters i.e. M/s. Vicky Sales and M/s. Jagdambe Export, Delhi, for the reason of them being overvalued.

2.2 Commissioner of Customs (Preventive), Jamnagar vide letter dated 10.07.2019 proposed to initiate action against Customs Broker M/s SSS Sai Forwarders Pvt. Ltd. for violation of CBLR, 2018 in the investigation being carried out in the case of mis-declaration of export goods.

2.3 Thereafter investigations were taken against the CB was as per regulations of CBLR, 2018. The license of Customs Broker M/s SSS Sai Forwarders Pvt. Ltd. (11/1830) was suspended vide Order no. 06/2020-21 dated 31.07.2020. The Suspension of the CB license was continued vide Order No. 16/2020-21dated 11.09.2020, pending inquiry under Regulation 17 of the CBLR, 2018.

2.4 Show Cause Notice dated 29.09.2020, was issued to the CB calling them upon to show cause, as to why the licence bearing no. 11/1830 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 of the CBLR, 2018, for their failure to comply with the provisions of the Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

2.5 As per the Inquiry report dated 01.04.2021 the charges framed against CB for the violation of Regulation 10(a), 10 (d), 10(e), 10(m) & 10(n) of the CBLR, 2018 were held as 'not proved' except for charge under Regulation 10(n) in the Inquiry Report.

2.6 Principal Commissioner vide his Disagreement Memo dated 24.05.2021 disagreed with the inquiry report and called upon the CB to make submissions before him in the matter.

2.7 The show cause notice has been adjudicated as per the impugned order referred in para 1, above. Aggrieved appellant have preferred this appeal.

3.1 We have heard Shri Aditya Tripathi, Advocate for the appellant and Shri Manoj Das, Assistant Commissioner Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submit that:

- Trade Wings Logistics India Pvt. Ltd. [2019 (370) ELT 510 (Chennai)]
- United Safeway India Pvt. Ltd [2019 (369) ELT 1563 (T-Bang)]
- KVS Cargo [2019 (365) ELT 392 (T-Del)]
- ACE Global Industries [2018 (364) ELT 841 9T-Chennai)
- Sadanand Chaudhary [2018 (363) ELT 1018 (Tri Delhi)]
- APS Freight & Travels Pvt. Ltd. [2016 (344) ELT 602 (Tri Delhi)]
- HIM Logistics Pvt. Ltd. [2016 (338) ELT 725 (Tri Delhi)]

3.3 Arguing for the revenue learned authorized representative reiterates the findings recorder in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 A case was taken up for investigation by the Jamnagar Customs in respect of overvaluation of goods exported. Exporters used to take CGST/SGST credit on the inflated invoices issued by their supplier and subsequently, these goods were cleared for export on payment of IGST from their accumulated IGST credit account and claimed refund of the same. On examination during investigation it was found that quality and condition of goods was not corresponding to the FOB value declared in the Shipping Bills. The FOB value declared in the Shipping Bills was overvalued and the same was in contravention of provisions of Customs Act, 1962. The proceedings for revocation of the CB license in the present case have its foundation in this case. Interestingly after completion of investigation of the case, the CB, whose license has been revoked has not been made noticee in the Show Cause Notice issued by the Jamnagar Customs.

4.3 It is also interesting to note few paragraphs from the Show Cause Notice issued by the Jamnagar Customs:

*"2. Whereas it appears that M/s. Vicky Sales, Shop No. 2, Ground Floor, Plot No: 5,Block – A, Milap Nagar, New Delhi 110 059, holders of Import Export Code No. AOUPV9466K and GST Registration No: 07AOUPV9466KIZM, through their customs Broker M/s. SSS Sai Forwarders Private Limited, filed following 4 Free Shipping Bills along with Tax Invoice, Packing List and Annexure *A* for Export Value Declaration, with Customs House, Gujarat Pipavav Port Limited, Pipavav, to export of "WALL PAPER AND SIMILAR WALL COVERINGS, CONSISTING OF PAPER COATED OR COVERED ON THE FACE SIDE, WITH A GRAINED EMBOSSED, COLOURED, DESIGN, PRINTED OR OTHERWISE DECORATED LAYERS OF PLASTICS* to M/s. Hakeemsons. General Trading LLC, Post Box No: 45762, Dubai, United Arab Emirates by classifying the same under Customs Tariff Heading No. 4814 20 00.*

Sl No	Shipping Bill		Invoice Number & Date	C&F Value of goods (In USD)	DECLARED F.O.B. (In INR)	IGST involved (In INR)
	Number	Date				
1	4336032	22-05-19	VS/EXP/ 2019-20/ 001 dated 03-05-19	2,05,200/-	1,42,43,677.50	25,67,052/-
2	4336091	22-05-19	VS/EXP/ 2019-20/ 002 dated 03-05-19	2,05,200/-	1,42,43,677.50	25,67,052/=
3	4395189	24-05-19	VS/EXP/ 2019-20/ 003 dated 03-05-19	2,05,200/-	1,42,43,677.50	25,67,052/-
4	4395068	24-05-19	VS/EXP/ 2019-20/ 004 dated 03-05-19	2,05,200/-	1,42,43,677.50	25,67,052/=
Total ------------- --------------→				8,20,800/-	5,69,74,710.00	1,02,68,208/-

(Sl. No. 1 to 16 of Annexure "A" of Show Cause Notice)

3. Whereas it appears that M/s. Jagdambe Exports, Unit No. 114, First Floor, Plot No.B-7, Netaji Subhash Place, Pitampura, New Delhi 110 034 holders of Import Export Code No. IZNPS5830N and GST Registration No. 07IZNPS5830N1ZC, *through their Customs Broker M/s. SSS Forwarders Private Limited, filed following 4 Free Shipping Bills along with Tax Invoice, Packing List and Annexure "A" for Export Value Declaration, with Customs House, Gujarat Pipavav Port Limited, Pipavav, to export of "WALL PAPER AND SIMILAR WALL COVERINGS, CONSISTING OF PAPER COATED OR COVERED ON THE FACE SIDE, WITH A GRAINED EMBOSSED, COLOURED, DESIGN, PRINTED OR OTHERWISE DECORATED LAYERS OF PLASTICS to M/s. Hakeemsons General Trading LLC, Post Box No: 45762, Dubai, United Arab Emirates by classifying the same under Customs Tariff Heading No. 4814 20 00.*

Sl No	*Shipping Bill*		*Invoice Number & Date*	*C&F Value of goods (In USD)*	*DECLARED F.O.B. (In INR)*	*IGST involved (In INR)*
	Number	*Date*				
1	*4339935*	*22-05-19*	*JE/EXP/ 2019-20/ 001 dated 03-05-19*	*2,05,200/-*	*1,42,43,677.50*	*25,67,052/-*
2	*434006*	*22-05-19*	*JE/EXP/ 2019-20/ 002 dated 03-05-19*	*2,05,200/-*	*1,42,43,677.50*	*25,67,052/=*
3	*4395073*	*24-05-19*	*JE/EXP/ 2019-20/ 003 dated 03-05-19*	*2,05,200/-*	*1,42,43,677.50*	*25,67,052/-*
4	*4395193*	*24-05-19*	*JE/EXP/ 2019-20/ 004 dated 03-05-19*	*2,05,200/-*	*1,42,43,677.50*	*25,67,052/=*
Total ------------- --------------→				*8,20,800/-*	*5,69,74,710.00*	*1,02,68,208/-*

(Sl. No. 17 to 32of Annexure "A" of Show Cause Notice)

4. Whereas during the course of assessment in the case of Shipping Bills, tabulated at Para 2 above, filed by M/s. Vicky Sales it appears that the goods meant to be exported were overvalued therefore vide letter F. No, VIII/48-02/Misc-Export Valuation/2019-2020 dated 25-05-2019 (Sl. No. 33of Annexure "A" of Show Cause Notice they were asked to produce for the period from January, 2019 to April, 2019:

(i) GST Returns viz. GSTR-3B, GSTR-1, GSTR-2, etc;

(ii) purchase invoices along proof of payment made to the supplier of goods;

(iii) a copy of all the Shipping Bills, along with the copy of invoices, purchase orders, contracts, etc;

(iv) all the Bank Realization Certificates for exports made in the past

5. Whereas during the course of assessment in the case of Shipping Bills, tabulated at Para 3 above, filed by M/s. Jagdambe Exports it appears that the goods meant to be exported were overvalued therefore vide letter F. No, VIII/48-02/Misc-Export Valuation/2019-2020 dated 25-05-2019 (Sl. No. 34of Annexure "A" of Show Cause Notice they were asked to produce for the period from January, 2019 to April, 2019:

(i) GST Returns viz. GSTR-3B, GSTR-1, ASTR-2, etc;

(ii) purchase invoices along proof of payment made to the supplier of goods;

(iii) a copy of all the Shipping Bills, along with the copy of invoices, purchase orders, contracts, etc;

(iv) all the Bank Realization Certificates for exports made in the past

8. Whereas upon scrutiny of the documents submitted by M/s. Vicky Sales, it appears that they had purchased the goods, meant to be exported, from their suppliers at a price which was higher than the price at which they were exporting the goods i.e. they were exporting the goods @ USD 2 Per Square Feet i.e. Rs. 139/- per Square feet whereas their purchase price was Rs. 267/- per square feet. It was also. a fact that 'on that date the suppliers had not filed any GST returns. Thus it leads to suspicion that no prudent businessmen would sell the goods by incurring losses.

9. Whereas upon scrutiny of the documents submitted by M/s. Jagdambe Exports, it appears that they had purchased the goods, meant to be exported, from their suppliers at a price which was higher than the price at which they were exporting the goods i.e. they were exporting the goods @ USD 2 Per Square Feet i.e. Rs. 139/- per Square feet whereas their purchase price was Rs. 165/- per square feet from M/s. Sunlight Export and Rs. 134/- per square feet from M/s. ESS TEE Sales and M/s. Hargun Exports. It was also a fact that on that date the suppliers had not filed any GST returns. Thus it leads

to suspicion that no prudent businessmen would sell the goods by incurring losses.

10. Due to above abnormalities, vigil was kept and it was noticed that one Shri Iqbal Satarbhai Shekda was involved in clearance of the goods covered under Shipping Bills, appearing at Para No. 2 & 3, filed by M/s. Vicky Sales and M/s. Jagdambe Exports.

11.1 Whereas, it appears that statement of Shri Iqbal Satarbhat Shekda, "H" card holder of M/s. Premji Kanji Masani Private Limited, was recorded on 30-05-2019 (Sl. No. 88 of Annexure "A" of Show. Cause Notice), under Section 108 of the Customs Act, 1962, before the Superintendent of Customs House, Gujarat Pipavav Port Limited, Pipavay wherein he inter-alia stated that his firm had filed various shipping bills, during the period from March, 2019 to May, 2019, on behalf of M/s. Shiv International, M/s. Vicky Sales and M/s. Jagdambe Exports for exports of Wallpaper; that these exporters were introduced to them by one Shri Yogesh Kanubhai Goradia (Mobile No. 97686-38575), resident of Rajula who work as forwarders i.e. he works as middleman between importer/exporter and the Customs House Agent; that he knows Shri Yogesh Kanubhai Goradia since 6 to 7 months as previously he had given them work of clearance of import cargo; that upon being contacted by Shri Yogesh Kanubhai Goradia he had directed him to contact his G - Card Holder Shri Prakash R. Masani; that all work regarding dealing of export documents and cargo is handled by their Veraval office; that during process of documents by customs it was found that the goods were overvalued and were allowed for export only upon exporter giving an undertaking that the particulars mentioned in the Shipping Bills are correct; that all the communications with the exporter was done by Shri Yogesh Kanubhai Goradia and he did not entered into direct communication with them; that he cannot recognize any exporters as he had not met them; that he used to co-ordinate with Shri Yogesh

11.2 Shri Iqbal Satarbhai Shekda in his statement further stated that shipping bills for the current consignment being exported by M/s. Vicky Sales and M/s. Jagdambe Exports have been filed by another Customs House Agent i.e. Customs Broker; that in previous shipping bill certain

issues had arisen therefore this time they did not file the shipping bills this time; that present shipping bills have been filed by M/s. SSS Sai Forwarders Private Limited, Pipavav.

11.3 Upon being specifically asked why he approached the customs authorities for the present consignment despite not being handled by his firm to which Shri Iqbal Satarbhai Shekda stated that he Shri Yogesh Kanubhai Goradia has asked him to help with the clearance of these consignments.

12.1 Whereas it appears that the statement of Shri Yogesh Kanubhai Goradia was recorded on 30-05-2019(Sl. No. 89 of Annexure "A" of Show Cause Notice), under Section 108 of the Customs Act, 1962, before the Superintendent, Customs House, Gujarat Pipavav Port Limited, Pipavav, wherein he provided his Mumbai residential address, email address and confirmed that his mobile numbers were 9769998740 and 9768638575.

12.2 Shri Yogesh Kanubhai Goradia upon being asked further stated that he worked as forwarder from Rajula, Mundra and Mumbai and have worked with (1) M/s. Rishad Shipping & Clearing Agency Private Limited at Mundra Port, (2) M/s. Premji Kanji Masani Private Limited and M/s. SSS Sai Forwarders Private Limited at Pipavav Port and (3) M/s. CBN Impex Private Limited and M/8. Sainath Clearing Agency, owned by his cousin Shri Dinesh Mehta, at JNPT, Mumbai; that he work on behalf of the various importers / exporters and as a link between the importers/ exporters and the CHA; that he also receives work from other forwarders; that he receives payment/commission from the importer/exporter/forwarder for the services provided which is either received in cash as well as by account transfer; that the payment to CHA is done by him in cash as well as by account transfer.

12.8 Upon being asked Shri Yogesh Kanubhai Goradia stated that Let Export Order has been granted for those shipping bills filed by M/s. Rishad Shipping & Clearing Agency Private Limited85M/s. Premji Kanji Masani Private Limited however no Let Export Orders have been passed in the case of shipping bills filed by M/s. SSS Sai Forwarders Private Limited.

12.9 Shri Yogesh Kanubhai Goradia, upon being asked, stated that it his practice to verify the genuineness of the export only on the basis of the KYC which are received either by email or courier; that he receives the original documents from exporter either by courier or with goods via truck; that the scanned copies are received by email or WhatsApp from forwarder, that there is no direct communication with the exporter; all the communications are through Shri Sandeep Dawar and Shri Vijay by email, mobile phone or WhatsApp.

12.10 Shri Yogesh Kanubhai Goradia stated that the cargo of wallpaper covered under Vicky Sales Invoice Nos. (i) VS/Exp/19-20/001 (ii) VS/Exp/19-20/002 (iii) VS/Exp/19-20/003 and (iv) VS/Exp/004 all dated 03-05-2019 and M/s. Jagdambe Exports Invoice Nos. (i) JE/Exp/19-20/001 (ii) JE/Exp/19-20/002 (iii) JE/Exp/19-20/003 and (iv) JE/Exp/19-20/004 all dated 03-05-2019 had arrived in Rajula before 16 days i.e. around 14-05-2019 and were stored in godown, taken by him on rent, located at Hindorna Circle, Rajula; that since total 8 shipping bills (Para 2 and 3 supra) have been filed i.e. 4 each shipping bills of M/s. Vicky Sales and M/s. Jagdambe Exports the cargo was moved to Contrans Logistics CFS on 23-05-2019 and 25-05-2019; that the cargo pertaining to another 12 invoices (1080 box approx.) was still lying in the godown; that he had received Rs. 20,000/- in cash from Shri Sandeep Dawar for the purpose of godown rent and local transportation expenses; that his elder brother Shri Dipak, whose mobile number is 8446610547 has booked the godown through one petrol pump owner at Hindorna Circle, Rajula; that the forwarder will pay for the godown charges.

12.11 Shri Yogesh Kanubhai Goradia further stated that M/s. Premji Kanji Masani Private Limited had informed him that since Shri Prakash R. Masaniis on leave therefore they cannot file the shipping bill therefore he had to change his CHA and these 8 shipping bills were filed through Shri Hitesh Bhatt (Mobile No. 9167618549) who is related to M/s. SSS Sai Forwarders Private Limited and also known to him; that he had come from Mumbai before 15 days to Rajula.

13. Whereas it appears that the examination of goods declared as "WALL PAPER AND SIMLAR WALL COVERINGS, CONSISTING OF PAPER COATED OR COVERED ON THE FACE SIDE, WITH A

GRAINED EMBOSSED, COLOURED, DESIGN, PRINTED OR OTHERWISE DECORATED LAYERS OF PLASTICS, lying at Contrans Logistics Private Limited's CFS, to be exported by M/s. Vicky Sales and M/s. Jagdambe Exports under different 8 Shipping Bills, tabulated at Para 2 & 3 supra, was carried out in presence of two independent panchas along with Shri Chirag Manatar, Executive of M/s. SSS Sai Forwarders Private Limited and Shri Yogesh Kanubhai Goradia, Proprietor of M/s. Jay Gigev Clearing Agency, Mumbai; that during the inspection and after looking to quality and condition of the goods it appeared that the said goods appeared to be overvalued in contravention of the provisions of the Customs Act, 1962 therefore the entire lot of good packed in 720 cartons, weighing 14,400 kilogram net, having declared F.O.B. value of Rs. 11,39,49,416/- seized under provision of Section 110 ibid and were handed over to custodian i.e. M/s Contrans Logistics Private Limited for safe custody. The above proceedings were recorded' under panchnama dated 31-05-2019(Sl. No. 93 of Annexure "A" of Show Cause Notice).

29.1 Statement of Shri Kanhaiya Agarwal, Director of M/s. SSS Sai Forwarders *Private Limited was recorded on 19-06-2019 (Sl. No. 154 of Annexure "A" of Show Cause Notice) under Section 108 of the Customs Act, 1962 before the Superintendent (PI), Customs (P), Hq. Jamnagar wherein he inter-alia after perusing his earlier statement dated 11-06-2019 stated that he agrees with the contents thereof and in token thereof he placed his dated signature thereon.*

29.2 ***Shri Kanhaiya Agarwal upon being asked stated that they have not verified the correctness of the declared address of the both the exporters viz. M/s. Vicky Sales and M/s. Jagdambe Exports by physical verification or by any other reliable source other than verified online through various portal; that they have no talked personally to the exporters viz. M/s. Vicky Sales and M/s. Jagdambe Exports on their given contact number for genuineness of their existence.***

29.3 Shri Kanhaiya Agarwal further stated that they have noticed that the signature made on authorisation letter, export invoice, bank verification certificate and bond in respect of M/s. Vicky Sales and M/8. Jagdambe Exports differ; that however they have *not taken this issue as serious matter as all the documents were given by Shri Yogesh Kanubhai Goradia through courier; that they have not done any verification of the exporters M/s. Vicky Sales and M/s. Jagdambe Exports other than online verification; that he produced the copies of documents retrieved online by them (Sl. No. 155 of Annexure "A" of Show Cause Notice).*

29.4 Upon being asked Shri Kanhaiya Agarwal stated that they have followed the procedure as prescribed under the Regulation 10 of CBLR, 2018 in the present case; that however they have not verified the identity of clients (exporters) and functioning of clients at the declared address by using reliable, independent, authentic documents, data or information in respect of the exporters M/s. Vicky Sales and M/s. Jagdambe Exports at their level; that they have obtained authorisation from each of the exporters from Shri Yogesh Kanubhai Goradia by whom he is for the time being employed as Customs Broker but its authenticity was not verified at their level considering the fact that exports have already been through Pipavav port.

29.5 Shri Kanhaiya Agarwal confessed that their firm has failed to exercise due diligence to ascertain the correctness of any information which they impart to their clients with reference to work related to clearance of the subject export cargo as they were under the impression that further verification is not warranted as the exporters have made export through Pipavav port earlier as per the shipping bill provided.

29.6 Shri Kanhaiya Agarwal, upon being asked, stated that generally they charge agency charges between Rs. 1,500/- to Rs. 2,500/ Stuffing charges Rs. 500/-, Shipping Bill Extra Rs. 300/- to Rs. 500/-, CFS charges and EDI Charges are as actual; that they have sent a , quotation of Rs. 2,000/- agency charges and S/B charges of Rs. 300/- to M/s. Vicky Sales and M/s. Jagdambe Exports through Shri Yogesh Kanubhai Goradia; that he produced the invoices raised by his firm to other exporters which shows that they have not charged anything extra.(Sl. No. 156 of Annexure "A" of Show Cause Notice).

58.1 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, M/s. Vicky Sales, New Delhi, are hereby called upon to show cause to the Additional

Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) goods having declared F.O.B. value of Rs. 11,63,94,894/- and involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 2,09,63,838/- should not be held liable for confiscation under Section 113(i) of the Customs Act, 1962;

(b) goods having declared F.O.B. value of Rs. 8,55,68,400/- and involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 1,54,02,312/ - should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962;

(c) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon them for rendering the goods appearing at (a) and (b) above liable for confiscation; and

(d) penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon them.

58.2 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, M/8. Jagdambe Exports, New Delhi, are hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) goods having declared F.O.B. value of Rs. 10,85,88,604/ - and involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 1,95,58,705/- should not be held liable for confiscation under Section 113(i) of the Customs Act, 1962;

(b) goods having declared F.O.B. value of Rs. 1,42,61,400/- and involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 25,67,052/- should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962;

(c) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon them for rendering the goods appearing at (a) and (b) above liable for confiscation; and

(d) penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon them.

58.3 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, M/s. Rana Exports, New Delhi, are hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) goods having declared F.O.B. value of Rs. 7,13,07,000/- involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 1,28,35,260)- should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962; and

(b) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon them for rendering the above goods liable for confiscation; and :

58.4. Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, Shri Sandeep Dawar, is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon him; and

(b) penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon him.

58.5 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, Shri Yogesh Kanubhai Goradia, is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon him; and

(b) penalty under Section 1.14AA of the Customs Act, 1962 should not be imposed upon him.

58.6 . Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, Shri Ravindrasinh Bharatsinh Jadeja, is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why:

(a) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon him; and

(b) penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon him.

58.7 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, Shri Iqbal Satarbhai Shekda, is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why: '

(a) penalty under Section 114 of the Customs Act, 1962 should not be imposed upon him; and

(b) penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon him.

58.8 Now, therefore, in view of Section 124 of the Customs Act, 1962 read with Clause 6 of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, M/8. Premji Kanji Masani Private Limited, Veraval are hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at Sarda House, Opp. Panchwati, Bedi Bunder Road, Jamnagar 361 008, within 30 days from the date of receipt of this Show Cause Notice, as to why penalty under Section 114 and/or 114AA of Customs Act, 1962 should not be imposed upon them.

59 The Noticees are hereby directed to produce all evidences upon which they intend to rely in support of their defence at the time of showing cause. They are further directed to indicate in their written reply as to whether they wish to be heard through virtual mode as stipulate in Central Board of Indirect Taxes &

Customs, New Delhi's instructions dated 27-04-2020 issued from F. No. 390/Misc/3/2019-JC or in person .. "

4.4 After making investigations the show cause notice was issued to the CB, proposing for revocation of his license pending the enquiry to be made in the matter by the enquiry officer.

4.5 The report of enquiry officer on the each of the charges and contravention leveled against the appellant is reproduced below:

ARTICLES OF CHARGE AND FINDINGS OF INQUIRY

15. Regulation 10(a) of CBLR, 2018

"A Customs Broker shall obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe."

15.1. In para 9.1 of impugned Show Cause Notice dated 29.09.2020, it has alleged that the CB appears to have contravened the provisions of Regulation 10(a) as they failed to obtain authorization from their client (exporter) directly and this fact was admitted by the CB in his statement 19.06.2019; that despite knowing that the signature made on authorization letter, export invoice, Bank verification certificate and Bond in respect of M/s Vicky Sales and M/s Jagdambe Export are different, he did not take this issue as a serious matter as all the documents were given by Shri Yogesh Goradia through courier. Thus it appears that the CB has failed in complying the provision of obtaining authorization.

Submission of CB during P.H.

15.2. In this cast, the CB obtained detailed authorization duly signed by these exporters. During investigation Original copies of authorization of both exporter were submitted to the officers of Customs Preventive, Jamnagar. It is not mandated in Regulation 10(a) of CBLR, 2018 that the Customs Broker shall obtain authorization from the exporter/importer directly, therefore, contravention of the said Regulation on the ground that the CB failed to obtain authorization from its client directly is patently incorrect and contrary to the provisions of this Regulation, Regarding difference in the signature made on authorization letter, export invoice, Bank verification certificate and Bond in *repeat of M/. Vicky Sales and M/s Jagdambe Export, the CB submits that normally signatures differ and sometimes some other authorized person also signs documents on behalf of the importer/exporter. However, such difference in signatures would not render these documents void. Moreover, there is no evidence or any statement that the CB was aware of any misdeclaration Also the CB came to know about the difference in signature when the officers of customs Preventive, Jamnagar thoroughly and minutely examined these documents. Even the assessing officers who raised initial doubt about overvaluation of the Impugned goods could not detect this difference.*

Findings of inquiry

15.3. I have seen copies of authorization letters produced by CB during P.H. I have gone through the Incident report dt. 20-6-19 with statement of CB dt. 19-6-19 and SCN dated 24.06.2020 issued by the Additional Commissioner of Customs (Preventive),Jamnagar after completion of investigation.

15.4. The CB obtained authorization from exporter through Mr. Yogesh Goradia. It is also important to mention that throughout the investigation both exporters have not denied the authorization and didn't indicated that they have not authorized the CB. Therefore charges that CB contravened the provisions of Regulation 10(a) are not proved,

16. Regulation 10(d) of CBLR, 2018

"The Customs Broker shall advise his client to comply with the provisions of the Act, other allied Ads and the rules and regulations thereof and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. as the case may be"

16.1. As per para 9.2 of impugned Show Cause Notice the CB appears to have contravened the provisions of Regulation 10(d) or CBLR 2018 as they have failed to advise their clients exporters to comply with the provisions of the Customs Act, 1962 and CGST Act, 2017 which led to the fraudulent availment of IGST credit by the exporters.

Submission of CB during PH.

16.2. The format of authorization sent by the CB to the exporters for their signature wherein it is clearly mentioned as under:

"We declare that we have read and understand customs law, foreign trade policy and procedure and other law for the tine being in force in India for import/export shipments and documents submitted here with are true, complete and correct in all manner and nothing has been concealed or attempted to conceal from the customs and any other authority."

Thus, it is well established that while obtaining the authority letter from exporters, the CB appropriately advised them to undertake to comply with all provisions of the Customs Act and rules/regulations made thereunder. During the course of assessment when the officers of customs asked for contain clarification/ information/ documents from these exporters, the CR promptly Informed the authorised representative of these exporters and on receipt of the requisite information immediately provided the same to the officers of customs. The CB also submits that the issue of overvaluation to claim refund of excess IGST came to the notice of the CB during the course of investigations only. The CB was not aware of any misdeclaration/suppression of fact at the time of filling of Shipping Bill or during their assessment. Therefore, allegation, if any, of not informing the concerned the Assistant Commissioner/the Deputy Commissioner about any non-compliance by these exporters cannot sustain. The CB also submits that in this case there is no allegation leave aside any evidence that the CB advised these exporters to not to comply with the provisions of the Custom Act, 1962 or to resort to misdeclaration. In view of these facts, there is no case of violation of provisions of Regulation 10(d) of CBLR, 2018

Findings of inquiry

16.3. I have gone through the Incident report dt. 20-6-19 with statement of CB dt. 19-6-19 and SCN dated 24.06.2020 issued by the Additional Commissioner of Customs (Preventive), Jamnagar after completion of investigation. There is no evidence to establish that CB has ill-advised the exporters about compliance of legal provisions or has hide any non-compliance by exporter from customs officers. Therefore charges that CB contravened the provision, of Regulation 10(d) are not proved.

17. Regulation 10(e) of CBLR, 2018

"the 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;"

17.1. As per para 9.3 of impugned Show Cause Notice, CB appears to have contravened the provisions of Regulation 10(e) of CBLR.2018 as they failed to exercise due diligence to ascertain the correctness of the information that they were imparting to their client. As admitted by the CB is his statement dated 19.06.2019 that he was in impression that further verification not warranted as the exporters have made export through Pipavav Port earlier as per the shipping Bills provided which led to the fraudulent export of goods for IGST availment The CB appears to not have worked diligently in the clearance of the said shipping bills for export consignments which were found mis-declared

Submission of CB during P.11.

17.2 'The fact of overvaluation of export goods and illegal claim of IGST, came to the knowledge of the CB during the course of investigation only and the CB fully cooperated with the officer of customs when the query was raised by them and made all out efforts to ensure that the exporters comply with the directions issued by the custom authorities and to provide all details and documents sought by them. The CB also ensured that Shri Yogesh K. Goradia, forwarder and authorised representative or exporters, remained present at all the time at Pipavav Port.

Findings of inquiry

17.3. I have gone through the Incident report dt. 20-6-19 with statement of CB dt. 19-6-19 and SCN dated 24.06.2020 issued by the Additional Commissioner of Customs (Preventive), Jamnagar after completion of investigation. There is no evidence to establish that CB has imparted incorrect information or non-information to the exporters about work relating to export of cargo. It is also important to mention that throughout the investigation both exporters have not alleged CB of imparting incorrect information Therefore charges that CB contravened the provisions of Regulation 10(e) are not proved,

18. Regulation 10(m) of CBLR, 2018

"A Customs Broker shell discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"

18.1. As per para 9.4 of impugner Show Cause Notice, CB failed to discharge his duties as a Customs Broker with efficiency. The CB has acted negligently in clearance of export consignment involving high amount of 1GST and despite knowing that the signature on the authorization leader, export invoice, Bank verification certificate and bond in respect of M/s Vicky Sales and M/s Jagdambe Export are different, he processed the clearance of the export consignment.

Submission of CB during P.H

18.2. CB has discharged its duty towards its clients and the customs department without any delay as the CB filed the Shipping Bills on receipt of the documents from the exporters and presented the documents for assessment to the officers of customs. When a query was raised by the officers of customs on the exporters to submit certain information/documents, the CB promptly informed the authorized representative of these exporters and on receipt of documents/information immediately landed them over to the officers of customs. There was no delay by the CB in performing its duties as Custom Broker.

Findings of inquiry

18.3. As per copies of checklist submitted by CB along with written submissions during PH and Incident report dt. 20-6-19, the development of events should be as follows.

- *On 21-5-19 CB asked for KYC documents and prepared checklist*
- *On 21-5-19 exporter approved checklist.*
- *On 22-5-19 CB asked for supporting documents to exporter.*
- *On 22-5-19 & 24-05-19 shipping bills were filed.*
- *On 25-5-19 DC, Customs, Pipavav called for documents supporting the valuation*
- *On 31-5-19 Goods examined and seized in presence of CB and representative of exporter,*

I don't see any delay on part of CB here. Therefore charges that CB contravened the provisions of Regulation 101m) are not proved.

19. Regulation 10(11) of CBLR, 2018

"the Customs Broker shall very correctness of importer Exporter Code (IEC) number, Goods and Services Tax Identification

Number (GSTIN) identity of his client functioning of his client at the declared address using reliable, independent, authentic documents, data or information;"

19.1. As per Para 9,5 of the impugned Show Cause Notice the CB failed to verify the identity, antecedent and address etc of their client as they did not verily the address of their exporter. The same was also admitted by the CB in his statement dated 19.06.2019 that they had not verified the identity of the client (exporters) and functioning of the client at the declared address by using reliable independent, authentic documents, data or information in respect of the exporters M/s Vicky Sales, Delhi and M/s Jagdambe Exports, Delhi at his level.

Submission of CB during P.H.

19.2. In case of exporters namely M/o Vicky sales and M/S Jagdambe Exports, the CB took proper care in verification, as under:

(i) In case of M/s. Vicky Sales, the CB obtained KYC documents viz Copy of IEC, Copy of GSTIN Registration, Copy of PAN Card, Copy of Aadhar Card of proprietor of exporter, Copy of Rent Agreement of the client (for address proof). The CB ascertained the authenticity of these documents from the various websites of the Government of India i.e., website of DGFT, website pertaining online verification of GSTIN, website of Income Tax Dept., etc.

(ii) Similarly, in case of M/s. Jagdambe Exports, the CB obtained KYC documents viz. Copy of IEC, Copy of GSTIN Registration, Copy of PAN Card, Copy of Aadhar Card of proprietor of exporter, Copy of Rent Agreement of the client (for address proof). The CB ascertained the authenticity of these documents from the various websites of the Government of India i.e., website of DGFT, website pertaining online verification of GSTIN, website of Income Tax Dept., etc.

Circular No.9/2010-Cus dated 08.04.2010, does not, in any manner mandate that a CB has to personally go and verify the address of their client, may it be anywhere in India. Merely because the KYC documents of the clients were accepted through authorised representative, it can't be inferred that *functioning of the client at the declared address, was not physically verified, which is also an impossible task to perform and perhaps was not necessary in view of the authenticity of the Government Documents verified online. The CB also submits that, the authorized representative of exporter as well as forwarder of both exporters, Sh. Yogesh Goradia was physically present at Pipavav Port during the examination of goods and also during investigation by the officers of customs. He also tendered his statements under Section 108 of the Customs Act, 1962 before those officers. Therefore, there is no failure on part of the CB to verify the authenticity of any of the exporters' viz. M/s. Vicky Sales and M/s. Jagdambe Exports.*

Findings of inquiry

19.3. I have gone through the incident report al. 20-6-19 with statement of CB dt. 19-6-19. On question no 3,4 7 the CB agreed that they had not done physical verification of exporter's address, that they had not talked to exporter in person, that they have not verified authenticity of authorization Letter received through Mr. Yogesh Goradia. I have also gone through trail and WhatsApp communication between CB and Mr. Goradia before filing of shipping bills wherein CB was requesting for KYC documents. During PH dt. 23-3-71, Mr. Dhakan, G-card holder, stated that in response to these emails, their regional office received KYC documents by hand before filing of shipping bills.

19.4. IEC and GSTIN are correct. However, in terms of verifying functioning of exporters at the declared address, I find that CB failed to check Authenticity of authorization letter and CB did not communicate to exporters directly. To that extent I find that charges that CB contravened the provisions of Regulation 10[n) are proved.

4.6 Principal Commissioner did not agree with the enquiry report and after issuing disagreement memo proceeded to adjudicate the show cause notice.

6.1 The defence had pointed out that CB had obtained authorization from exporters through Shri Yogesh Goradia but such authorization given by the exporters viz. M/S Vicky Sales and M/s Jagdambe Exports was legal and valid and that the exporters had not denied authorization given by them to CB for the entire period of investigation, and proceedings against them *and therefore no proceedings can be initiated against CB under Regulation 10(a) of CBLR 2018. I find that investigating agency had issued summons to exporters namely M/s Vicky Sales and M/s Jagdambe Exports, however none of them came out before investigating agency. I also note that Shri Yogesh Goradia was front man of Shri Sandeep Dawar, Delhi based forwarder and Shri Yogesh Goradia made arrangements right from receiving cargo, appointing Customs Brokers, checking and confirming checklist for filing of shipping bills, placing fake signatures on export documents etc. There is no question of denial of authorization by exporters in such circumstances where all the export formalities had been completed by the forwarders and no one knows the where about of IEC holders. I find that in the statement of Shri Kanhaiya Aggarwal (director of CB firm M/s SSS Sai Forwarders) recorded on 19.06.2019 under Section 108 of the Customs Act, 1962 he admitted that despite knowing that the signature made on authorization letter, export invoice, Bank verification certificate and Bond in respect of M/s Vicky Sales and M/s Jagdambe Export are different, he did not take this as a serious matter as all the documents were given by Shri Yogesh Goradia through courier, who (Shri Yogesh Goradia) is a forwarder and worked on behalf of various importers/ exporters on commission basis. The investigation revealed that the CB accepted the documents from a person who was not an employee of the exporter and CB never tried to find out the genuineness and antecedents of the exporters. The CB had no interaction with the exporter IEC holder. In fact, during preliminary investigation conducted against Exporters M/S Vicky Sales and M/s Jagdambe Exports, it was observed that Shri Yogesh K. Goradia, a forwarder and authorized representative of the exporters, had played active role at Port Pipavav. CB was dependent all the time on Shri Yogesh Goradia rather than on exporters for export related activity. The Customs documents were received from Shri Yogesh Goradia and not from M/s Vicky Sales and M/s Jagdambe Export the exporting firm. Despite enough experience in Customs Broking, it is strange that this did not arouse suspicion in mind of CB especially when CB was not in touch with their clients by any means. Thus it is evident that Customs Broker was deliberately not dealing with the exporter* *and he obtained authorization without proper verification of KYC documents in order to facilitate fraud being perpetrated. I find that the whole purpose of obtaining authorization has been defeated i.e. to ensure that the CB has interacted with the genuine exporter/ importer and is aware of the goods to be cleared on behalf of the client. The CB has filed the Shipping Bills without proper verification of the authorization letter from the exporter as mandated under Regulation 10(a) of the CBLR, 2018. I hold that the CB failed to fulfil the obligation of Regulation 10(a) of CBLR, 2018.*

7.2 I find that Shri Kanhaiya Agarwal (director of CB firm M/s SSS Sai Forwarders) in his statement recorded on 19.06:2019 under Section 108 of the Customs Act, 1962 admitted that he did not talk personally to the exporters on their given contact number or mobile number and the CB was only in contact with the mediator Shri Yogesh Goradia and the payments in cash as well as by account transfer were done by him. I hold that mere mentioning in format of authorization sent to the exporters whom he (CB) wasn't even in the know, does not suffice the obligation of the CB. Hence, it is evident that the CB failed to advise its clients (exporters) to comply with the provisions of the Customs Act, 1962 which led to the fraudulent availment of IGST credit by the exporters. It is obvious that there was no interaction between the Customs Broker and the actual IEC holder of the exporting firm M/s Vicky Sales and M/s Jagdambe Export. Therefore, in absence of any interaction with the exporter, it is clear that the Customs Broker could not have given proper advice to their client about the proper way to clear consignment through Customs. As already brought out the activities to the Customs authorities and noncompliance with the Rules & Regulations is a clear contravention of Regulation 10(d) of CBLR 2018. In view of discussions above, I find that the Customs Broker has intentionally violated the Regulation 10(d) of the CBLR, thus the allegation is conclusively proved.

8. It has been alleged that CB had not exercised 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.

8.1 I find that Shri Kanhaiya Agarwal (director of CB firm M/s SSS Sai Forwarders) in his statement recorded on 19.06.2019 *under Section 108 of the Customs Act, 1962 admitted that their firm failed to exercise due diligence to ascertain the correctness of any information which they imparted to their clients with reference to work related to clearance of the subject export cargo as they were in the impression that further verification was not warranted as the exporters have made export through Pipavav Port earlier as per the Shipping Bills provided which led to the fraudulent export of goods for IGST availment. In this regard, I find that the omission of imparting proper information regarding legal methods of export and obligations of an exporter and facilitating fraudulent exports is not acceptable. Instead, the CB conveniently received the documents from Shri Yogesh Goradia, who had no authorisation or any legal standing to hand over documents on behalf of their client. There is no evidence of the CB making any effort to discourage such exports. Thus, it is clear that the CB did not impart any information at all to their client and did nothing to discourage him from being fraud exporter.*

8.2 Thus, it is clear that the CB has not worked diligently in the clearance of the said shipping bills for export consignments which were found mis-declared. The CB had clearly accepted the documents from a person who was not the employee of the exporter and filed the S/B. Hence, it is evident that the Customs Broker by their acts of deliberate commission and omission had facilitated the exporters. to avail CGST/SGST credit on inflated invoices. It is clearly evident that the Customs Broker processed the documents for filing the Shipping Bills without exercising due diligence to ascertain the correctness of the information regarding clearance formalities needed to be fulfilled. They also suppressed the fact of difference in signatures on authorization and KYC from Customs authorities and that they were dealing with a forwarder in place of exporter. Thus, it is clear that the CB has deliberately not carried out obligation cast on them so as to feign innocence later. They clearly had malafide intention in defrauding the Govt. exchequer and hence deliberately did not exercise due diligence in imparting process & procedure to their clients in legal export of goods. Thus, I find that the CB had not fulfilled the obligation of 10(e) of CBLR, 2018 with malafide intention.

9.1 It was submitted that it was not pointed out in the disagreement memo that CB had delayed in discharging their duties at any point of time. It was also added that even the inquiry report dated 01.04.2021 had held that there was no delay on the part of customs broker in discharging their duties. I find that certificate and Bond in respect of exporters are different, he processed the clearance of the export consignment. Had the CB acted in a vigilant manner and performed his duties efficiently, the loss to the Government revenue would have not taken place. As already brought out in paras above the CB was well aware of the fraud. These deliberate commissions and omissions on the part of the CB firm prove grave inefficiency in discharging their duties as a Customs Broker. Thus, the CB had failed in complying with the provision of discharging his duties efficiently and has contravened Regulation 10(m) of CBLR, 2018. I further find that CB failed to communicate efficiently with the exporter, regarding the legal procedure for export and their obligation regarding receipts of remittance against the exports made. Had the CB acted in a vigilant manner and performed his duties efficiently, the loss to the Government revenue would have not taken place. I find that the CB had filed the shipping bills on behalf of the exporters without having done any verification about the business functioning of their client especially since the drawback and the IGST refund amounts involved are huge. These very acts point to lack of efficiency of the CB. On the other hand, these commissions and omissions on the part of the CB firm prove total inefficiency in discharging their duties as a Customs Broker. Hence, I find that the CB has violated and contravened the regulation 10(m) of CBLR, 2018.

10.2 I find that as a result, the whole purpose of KYC i.e. to ensure that the CB has received and verified the KYC documents submitted by the genuine client, is defeated. I find that the total IGST involved due to the alleged fraudulent over invoicing is Rs 2,05,36,416/-. The exporters fraudulently availed this type of credit of IGST with intention to get refund from overvalued exports. Thus considering the high amount of revenue involved, the CB was required to be more vigilant in verification of KYC norms at the time of taking up the consignment for Customs clearance, which had not been done in this case. In this regard, I *find it strange that the CB who has enough experience in matters of dealing with the importers and exporters, conveniently ignored the fact that the Shipping bills were similar and of same value and having noticed that the signatures made on authorization letter, export invoice, Bank verification certificate and Bond in respect of exporters differed with each other had not taken this issue as a serious matter as all the documents were given by Shri Yogesh Goradia through courier. I note that CB only contacted Shri Yogesh Goradia for their doubt and never tried to approach exporters by any means. Thus, it is safely assumed that this knowledge would force the CB to go in deep into the issue regarding the verification of KYC details. The fact that they did not do so and did not verify the business functioning only points to their malafide intention. In fact, they did not question the need to be dealing with the forwarder, Shri Yogesh Goradia instead of the client for all aspects. Instead the CB conveniently accepted documents from him including the KYC documents, thus facilitating fraudulent exporter. The CB conveniently made no efforts to know if the exporter was genuine or not and instead consciously turned a blind eye to all discrepancies as they were a part of the syndicate. As a Customs Broker, while accepting the documents from the third person, they did not take due care to verify the client, their business functioning, antecedents, genuineness of business, the export details and its correctness etc. using any independent, reliable and authentic means. There is no denying the fact that the CB M/s. SSS Sai Forwarders Pvt Ltd (CB No. 11/1830) had not been diligent in undertaking the KYC of the background of exporter and accepted documents from a person with no legal relation to their client. Given the discussions in paras above, I have no doubt in holding that this was done with malafide intention. This clearly proves contravention of provisions of Regulation 10(n) of the CBLR, 2018. The Inquiry also found the CB to have contravened the provisions of Regulation 10(n) of CBLR, 2018 as they failed to verify the identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.*

4.7 Before we further proceed it is necessary to understand the process of IGST Refund, for which Rule 96 of the CGST Rules, 2017 as amended is reproduced below:

Rule 96. Refund of integrated tax paid on goods [1][or services] exported out of India.-

(1) The shipping bill filed by [2][an exporter of goods] shall be deemed to be an application n for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files [3][a departure manifest or] an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in ***FORM GSTR-3*** [4]***[****or* ***FORM GSTR-3B****, as the case may be;*

[14]*[(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;]*

(2) The details of the [5][relevant export invoices in respect of export of goods] contained in ***FORM GSTR-1*** *shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.*

[6]*[****Provided*** *that where the date for furnishing the details of outward supplies in* ***FORM GSTR-1*** *for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of* ***FORM GSTR-1*** *after the return in* ***FORM GSTR-3B*** *has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:*

Provided *further that the information in Table 6A furnished under the first proviso shall be auto-drafted in* ***FORM GSTR-1*** *for the said tax period.]*

(3) Upon the receipt of the information regarding the furnishing of a valid return in ***FORM GSTR-3*** *[7][or* ***FORM GSTR-3B****, as the case may be;] from the common portal, [8][the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.*

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in [9][***Part A]*** *of* ***FORM GST RFD-07*** *.*

(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount [10][bypassing an order in ***FORM GST RFD-06*** *after*

*passing an order for release of withheld refund in Part B of **FORM GST RFD-07** .]*

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

*[11][(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in **FORM GST RFD-01** and shall be dealt with in accordance with the provisions of rule 89]*

[12][(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

> *(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or*
>
> *(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272 (E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it*

relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.]

[13][***Explanation.*** *- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.]*

4.8 Interestingly from the perusal of the Rule 96, it is evident that the refund under this rule is processed on the basis of system to system verification without of the invoices issued by the exporter under the provisions of IGST law, and the export documents filed by the exporter at the port of exportation. Only after matching of the said documents in terms of the value and the tax paid the refund is allowed on the system and deposited in the declared account of the exporter. While registering the on the GSTN, the exporter provides the details of his business premises, bank accounts etc., and the refund is credited to the declared account only. The process of refund of IGST is dependent on filing GSTR-1 and GSTR-3 (or GSTR-3B) returns by the claimant. In case the GSTR-1 and GSTr-3 (GSTR-3B) return is not filed the refund cannot be processed by the system. The value for the purpose of the IGST refund is the value that is determined as per the provisions of IGST Act, and hence the same needs to be determined by the IGST officer. The Custom Officer has as per the above referred Rule, not allowed any authority to re-determine the value and vary the refund claim. In the circumstances provided by the sub rule 4, Custom Officer at port could have with held the refund claim and refer the matter to the concerned Commissioner of Central Tax, for considering the refund claim. The refund in any case cannot exceed the amount of IGST paid by the exporter at the time of clearance of the goods for export from his premises. Interestingly in the present case the show cause notice issued by Jamnagar Customs and the impugned order goes a step further where they proceed against the exporters and the CB’s for the ITC credit taken by the exporter on the basis of the basis of the supplies received by them. We have serious doubts about the actions proposed vis a vis the provisions of Rule 96 reproduced above. Customs authority can proceed for overvaluation of the goods as per the provisions of Custom Act, 1962, but can they question the ITC credit availed by the exporter. Be that as it may be, here the licence of CB has been revoked for the reason that the exporters have fraudulently availed excess ITC, by receiving the goods at inflated prices from their supplier.

4.9 The role of CB is limited to facilitation of the imports and exports by filing the documents after due verification. Is the role beyond that envisaged in terms of any regulation under CBLR. The fraudulent credit if availed is a matter for investigation by the concerned Central/ State Tax Authorities. How can a CB be responsible for not advising the client, exporter in that respect?. How in case of exports when the exporter has been registered on the GSTN, after due verification and diligence by the GST authorities, the availability of the said GSTIN on the Export Invoices and the shipping documents be not enough to verify the identity of the exporter. In any case without GSTIN will it be possible to claim the IGST Refund in any circumstances.

4.10 In case of Freight & Travels Pvt. Ltd. [2016 (344) ELT 602 (Tri Delhi)] tribunal has held as follows:

4. We have heard both the sides and examined appeal records. The license of the appellant stands revoked only on the ground that they have failed in their obligation of verifying the identity of his client and their existence in the given address. The admitted facts of the case are that the importer’s details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer’s premises is mandated in the regulations nor it is a general requirement as per business practice. No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable.

4.11 In case of HIM Logistics Pvt. Ltd. [2016 (338) ELT 725 (Tri Delhi)], following was observed:

7. We find that the main focus of allegation against the appellant which resulted in the revocation of licence is their failure to verify the presence of the importers in the given address. We have perused the provisions of Regulation 11 as well as the Board's Circular dated 8-4-2010. It is an admitted fact that the partnership firm involved in the import of the auto parts is an existing concern, duly registered having a deed for partnership and two existing partners. The IEC copy, PAN Card, telephone bill of the firm, Voter ID of the partners, copy of the partnership deed have been seen and verified by the appellant. The allegation that the IEC was obtained by submitting forged documents has no effect on the appellant as they could only verify the correctness of the documents submitted before taking up of the work for any importer. There is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any importer.

8. We also note that in the present case the contravention alleged against the importer is non-declaration of retail sale price on auto parts imported by them for assessment under Section 4A of the Central Excise Act, 1944 for CVD. We find that the bill of entry was filed by the appellant after the goods were detained by the officers of DRI. The said bill of entry was filed on first check basis for verification of the goods before assessment. In such a situation, we find that no mala fide or intentional violation of any provisions of the Customs Act can be alleged on the part of the Customs broker. Regarding KYC norms and obligations under Regulation 11, we find that case as made out in the original order is neither convincing nor sustainable.

9. We find that the impugned order did not make out a sustainable case for revocation of licence. In the case of Setwin Shipping Agency v. CC (General), Mumbai - 2010 (250) E.L.T. 141 (Tri.-Mumbai), the Tribunal held that there is no requirement for the CHA to verify physically the premises of importer/exporter. The Tribunal also observed that it is a settled law that the punishment has to be commensurate and proportionate to the offence committed. In the present case, we *notice that the punishment of revocation is not justifiable even if it is to be admitted that physical verification of the importer's premises could have avoided the filing of the bill of entry by the appellant. Even in such a situation, the violation in respect of the cargo viz. the non-declaration of the RSP on the auto parts, a debatable point of interpretation, cannot be held against the appellant to result in the revocation of their licence. Here, it is to be noted that the bill of entry was filed after the detention of the goods for inquiry by the DRI Officers and request for physical verification of the cargo before assessment has been made in the form of first check bill of entry. We find that the impugned order passed on dis-agreement with the inquiry report has not brought out clear sustainable ground for such extreme action of revocation of licence. Violation of CBLR, 2013 has not been brought out as all the points have been elaborately discussed in the inquiry report and no sustainable ground for differing with the same could be made out.*

Upholding this order, Hon'ble Delhi High Court has as reported at [2017 (348) ELT 625 (Del) observed as follows:

"This appeal by the Revenue challenges an order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) [2016 (338) E.L.T. 725 (Tri. - Del.)], whereby the adjudication and Appellate order revoking the respondent's Customs House Agent's (CHA) licence was set aside. The allegations levelled against the respondent were that as a customs' broker it had not fulfilled the obligations cast on it inasmuch as there was no proper verification of the particulars of the party which it sought to represent. The Tribunal relied upon a previous ruling Setwin Shipping Agency v. CC (General), Mumbai - 2010 (250) E.L.T. 141 (Tribunal-Mumbai), and held that in the facts and circumstances of the case, the interpretation that the respondent was under an obligation to physically verify the particulars, was misplaced.

2. This Court notices that the CESTAT construed the provisions of Regulation 11 and the Board Circular of 8-4-2010 and found that the partnership firm involved in the import of consignment was an existing concern, duly registered under a partnership *deed and two existing partners and that its IEC copy, PAN Card, telephone bill of the firm, Voter ID of the partners, copy of the partnership deed have been verified by the respondent."*

4.12 In view of discussions as above we do not find any merits in any of the findings recorded by the Principal Commissioner, in respect of any of the charges framed against the appellant under regulation 10 (a), (d), (e), (m) & (n), whereas the findings recorded by the enquiry officer are more justifiable and logical. In the case of ACE Global Industries [2018 (364) ELT 841 (Tri Chennai)] tribunal observed as follows:

"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein. On the other hand, the Inquiry Officer, appointed under CBLR, 2013, has opined that there is no substantive case to level charges violation of Regulation 11(a), (b), (n), (e) & (k) of the CBLR, 2013. The Inquiry Officer has in fact clearly stated that he has not found anything substantial that can merit proposing revoking the license of the appellant or imposing the penalty. The Inquiry Officer has categorically reported that at the most, appellant may be given a strict warning."

4.13 Even if we hold that the appellant is guilty of the charges leveled against him then also can his license be revoked for that reason in the circumstances of this case. In case of KVS Cargo [2019 (365) ELT 392 (Tri Del.)] tribunal held:

7. The Directorate of Revenue Intelligence investigated the case of fraudulent import of food supplements, by certain *unscrupulous elements, in contravention of FSSAI Act, 2006. The appellant had filed the relevant bills of entry. After enquiring into the activity undertaken by the appellant, the Enquiry Officer in his report exonerated the appellant against the charge of violation of regulation 11(a), (d), (e), (n) of the CBLR 2013. The main charges made against the appellant are regarding violation of the following regulations :*

- *(i) Regulation 11(a) for failure to obtain proper authorization before filing the Bill of entry.*
- *(ii) Regulation 11(d) for failure to advice the importer to comply with custom provisions.*
- *(iii) Regulation 11(e) for failure to exercise due diligence to ascertain the correctness of information he imparts to his client.*
- *(iv) Regulation 11(n) for failure to verify antecedent, correctness of IEC no. and identity of the client.*

8. The investigations undertaken by DRI has established that the imports have been made making use of the IEC Code number of M/s. Unisys Enterprises. The partners of M/s. Unisys Enterprise have admitted that they were not the actual importers but the import was organized by Shri Amar Vachhar. For monitory considerations, the IEC code number was allowed to be utilised by M/s. Unisys Enterprise. It is further on record that Shri Amar Vachhar has been in touch with Shri Sameer Jha, proprietor of appellant firm.

9. Violation of Regulation 11(a) has been alleged against the appellant. The argument of the appellant is that there is no need for a personal meeting of the CB with the importer. However, we find that this is a case where IEC of the importer firm was being misused by a third person, Shri Amar Vachhar who was neither partner nor held any other official position in that firm. Both the partners of M/s. Unisys Enterprises have disclosed in their statements to DRI that they were not aware of the details of the imports and had never met Shri Sameer Jha, proprietor of CB. From this, it emerges that the appellant has failed to obtain the authorization from the actual importer and violation of Regulation 11(a) stands established.

10. Regarding Regulation 11(d), requiring the CB to advice their client to comply with the provisions of customs Act, it stands *established that the appellant has not even met the actual importer and as such requesting of advising the client for compliance of various legal positions does not arise. In view of the above failure to observe Regulation 11(d) stands established.*

11. Regulation 11(e) requires due diligence to ascertain the correctness of information which he imparts to client. In the facts of the present case, both the partners of M/s. Unisys Enterprise, have admitted that they were unaware of the actual imports made in their name. Further, the appellant also has admitted that they never met the owner of the firm. From this it appears that the appellant failed to exercise due diligence to ascertain the correctness of information which he imparted to the client with reference to work related to clearance of cargo.

12. Regulation 11(n) requires the CB to verify the antecedents, correctness of IEC code no., identity of the client and its functioning at the declared address. In the present case, we find that the appellant has simply accepted the address appearing in the driving license of Shri Sachin Gulati, partner of M/s. Unisys Enterprise. The appellant failed to notice that the address in the IEC document is different. Had the appellant made any serious verification, he would have known that the IEC of the firm was being used by a third person, Shri Aman Vachhar. Consequently, we are of the view that violation of Regulation 11(n) stands established for failure to verify antecedents, correctness of IEC details.

13. As discussed above, we conclude that the appellant is guilty of violations of CBLR 2013. However, considering all the facts and circumstances, of the case, we are of the view that revoking the CB license is too grave a penalty to be imposed for the above violations. The ends of justice will be met by imposing a penalty of Rs. 50,000/- on the appellant, in addition to the forfeiture of the whole amount of security deposit.

4.14 Principal Commissioner has relied upon the following decisions in his order:

Rubal Logistics Pvt. Ltd. [2019 (368) E.L.T. 1006 (Tri. – Del.].

"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 misdeclaration/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."

HLPL Global Logistics Pvt. Ltd. [2019 (370) E.L.T. 501 (Tri. - De!.)} wherein it was held that -

"Under the circumstances, we are in agreement with the finding of the Ld. Adjudicating authority that CHA helps not properly verified the functioning of the client from at the declared address by using reliable independent and authenticate documents. This was a serious lapse on part of the CHA in verifying the KYC before taking up the Customs clearance of consignment of rough diamond imported by M/s. Neotex Exim Put. Ltd. The appellants, considering the nature of the imported goods i.e. rough diamond, would have exercised more vigilant approach before taking up the consignment for Customs clearance after verification of KYC norms of the importer, which has not been done in this case".

However we find that the said decision has not been rendered in a proceedings initiated under CBLR, but is under section 110(2) of the Customs Act, 1962 as observed by the tribunal in para 5 reproduced below:

"5. We have heard rival contentions and perused the case record. The issue before us is to decide as to whether the appellants has any role in the deliberate overvaluation of the imported goods by the importer and also whether they have failed to verify the KYC norm as per the CBLR, 2013. We find that the show cause notice has been issued under Section 110(2) of the Act and not under the Section 124 of the Customs Act. For the better appreciation of the fact, we hereby reproduce the provisions of Section 110 of the Act :

110. Seizure of goods, documents and things. - …..

Section 110(2) of the Act deals with extension of time period for issuance of show cause notice within prescribed period of six months of the seizure of the goods."

4.15 Thus we are of the opinion that enquiry officer has more reasonably concluded in the matter, and the appellant CB can at the most be held guilty for contravention of the Regulation 10 (n). Various High Courts have held that punishment for the offences should be proportionate to the gravity of offence. In the present we do not find that appellant was in any way responsible for any act of misconduct but is vicariously responsible for the acts of their employees, hence the punishment of revocation of licence is much harsh and disproportionate to the offences committed.

4.16 Delhi High Court has in case of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)] held as follows:

"*13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for* *consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."*

4.17 Delhi High Court has in case of Ashiana Cargo Services[2014 (302) ELT 161 (DEL)] held as follows:

"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse if the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.

12. Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to non-employees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has - as of today - been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that the trust operating between the Customs Authorities and the CHA is to be taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. A penalty must be imposed. At the same time, the penalty must - as in any ordered system - be proportional to the violation. Just as the law abhors impunity for infractions, it cautions against a disproportionate penalty. Neither extreme is to be encouraged. In this case, in view of the absence of any mensrea, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant's ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/mensrea, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24-1-2005."

4.18 Bombay High Court has in case of AS Vasan & Sons (Bombay)[2010 (249) ELT 492 (BOM)] held as follows:

"6. As regards the first ground in paragraph no. 13 of the order dated 20th May 2009, the respondent has observed that at the time of hearing, Mr. Unnikrishnan gave visiting cards (proposed for noting the persons or seeking entry) into the customs area for hearing of the petitioner firm showing that it was a Custom House Agent. The petitioner firm was thus representing that it possessed a CHA licence even after the CHA licence had expired and not renewed. The explanation by Mr. Unnikrishnan that the visiting cards were printed two years ago when the CHA licence was still valid and he had simply used the same card without any intention of making any false representation was not accepted by respondent no. 2. In our opinion, the explanation offered by Mr. Unnikrishnan was a plausible explanation and there was no material on record, that for except giving of the visiting card to the respondent no. 2 himself at the time of hearing that the petitioner was using the visiting cards anywhere else and/or misrepresenting that they were still possessing CHA licence. In our view, giving of the visiting card to respondent no. 2 was even assuming if amounted to misconduct was too insignificant a thing warranting cancellation of the licence or its refusal of its renewal."

4.19 Madras High Court has in case of Transport Logistics [2016 (338) ELT 380 (Mad)] held as follows:

"13. In any event, for giving signed blank forms to third parties, the revocation of licence is harsh penalty and the punishment should commensurate for guilty of offence. Therefore, the order of the Commissioner of Customs revoking the CHA licence as confirmed by the CESTAT is set aside.

14. By this order, this Court only restore the CHA licence. However, forfeiture of the security deposit is concerned, there is a violation of CHA regulation by the appellant. Interest of justice would be met by restoring the CHA licence and confirming the order of forfeiture of security deposit."

4.20 We also take note of the following submissions made by the appellant which have not been disputed by the revenue authorities:

- They have been performing as CB for nearly 8 years and have developed goodwill for their firm in trade.

- They handle work relating to shipments of nearly 1000 reputed star house and AEO certified clients across the country.
- Their aggregate turnover for the last five years is about Rs 1591.18 crores.
- They have performed their functions throughout as Custom Brokers with utmost care and diligence, and their past record is evidence for their goodwill, integrity and efficiency in handling the customs related works.
- They have nine branches spread across the country and employ about 250 persons, the order of revocation of their license will not only be harsh on them but will deprive all the persons employed by them from their livelihood.

4.21 In view of the above discussions we are inclined to modify the impugned order to extent of:

(i) Setting aside the order of revocation of the license of CB and forfeiture of the security deposit.

(ii) Reduce the penalty imposed on the CB from Rs 50,000/- to Rs 25,000/-

(iii) Since we are setting aside the order of revocation of license all the licenses and "F", "G" and "H" cards issued to the appellants and surrendered as per the impugned order, be restored to him immediately.

5.1 Appeal is partly allowed as indicated in para 4.21 above.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(P. Dinesha)
Member (Judicial)

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