



OFFICE OF THE COMMISSIONER
CUSTOM HOUSE, KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA
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A	फाइल संख्या/ File No.	S/7-57/CHA/2005
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM- 02 -2019-20
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPALCOMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	30.04.2019
E	जारी करने की दिनांक/Date of issue	30.04.2019
F	आदेशमूल सं, दिनांक/Order-in-Original No (Suspension Order)& date	KND-CUSTM-000-COM-01-2019-20 DATED 11.04.2019
G	नोटीसी पार्टी /Noticee/Party	M/s B.N.Thakker and Company, Room No. 207, 2 nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129A(1)(a) of Customs Act, 1962 read with Rule 6(1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A.-3 to:

"केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण"

पश्चिम क्षेत्रीय बेंच

द्वितीयतल, आसरवा बहुमाली भवन

गिरधर नगर ब्रिज के समीप ००४ ३८० -अहमदाबाद, गिरधर नगर,

Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5.00/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5.00/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), 1982 और सीमा शुल्क अधिनियम, 1962, के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का %7.5 भुगतान करना होगा।

An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

Subject: - Action under Regulation 16 of CBLR, 2018 against M/s B.N. Thakker and Company, Gandhidham.

BRIEF FACTS OF THE CASE:

M/s B.N.Thakker and Company, Room No. 207, 2nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201 (hereinafter referred to as 'the CB') was granted Custom Broker License No.CHA/KCH/R/2/1994 (PAN No. AACFB1035E) dated 15.03.1994, valid up to 13.03.2027, by Commissioner of Customs, Custom House, Kandla under regulation 10(1) of CHALR,1984 { now regulation 7(2) of CBLR,2018.

2. An offence report along with Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, were received on 26.03.2019 from the Additional Commissioner (CBS), Custom House Mundra vide F.No. S/07-46/Misc-CB/CHM/2018-19 dated 15.03.2019, outlining the role of the Custom Broker in the case of export of cheap quality overvalued goods viz. Polyester Baby Rompers, Polyester frock, Ladies undergarments with an intention to avail higher amount of drawback and for the necessary action against the CB M/s B. N. Thakker and Company under Customs Brokers Licensing Regulations, 2018.

2.1 It is brought that on the basis of a specific information that some unscrupulous exporters are exporting cheap quality goods viz., Polyester Baby Rompers, Polyester frock, Ladies undergarments by overvaluing their export cargo and intend to avail higher amount of drawback on the same, the officers of Special Intelligence and Investigation Branch (SIIB), Customs House, Mundra examined the following cargos:

Table - 1

(Amount in INR)

Sr. No.	Name of Exporters M/s	S. B. No. and date	Description of Goods	No. of Pkgs. (ctns.)	Qty of goods (pcs.)	Ass. Value Declared (CIF) INR	Draw back claimed INR
1	Wafa International	4477415/02.03.17	Polyester Baby Romper	60	14400	7163251	542944
2	- do -	4488745/02.03.17	Polyester Frock	60	18000	10478160	792000
3	Global Enterprises	4443537/01.03.17	- do -	60	18000	10478160	792000
4	Super Trading Co.	4477514/02.03.17	Ladies Under Garments	59	17700	4683420	265500
5	Monarch Collection and Trading	4484298/02.03.17	Polyester Baby Romper	55	18480	9107267	609840
6	Girri Enterprise	4442876/01.03.17	Ladies Under Garments	56	17700	4507791	265500

2.2 The aforesaid goods under the aforesaid 06 shipping bills were examined and seized by the SIIB Officers. Each of the exporters, requested the Deputy Commissioner (Export) that their supplier mistakenly had forwarded low quality cargo whereas they had asked their supplier to send best quality which was well packed cargo at Mundra CFS. Finally they requested to permit them to export their cargo under the cover of new invoice enclosed with their request letter.

2.3 Subsequently, market enquiries for each of the seized cargo were conducted on 21.03.2017 wherein the customs broker also accompanied the customs officers. The outcomes of the market enquiries are as under:

Table - 2

(Amount in INR)

Sr. No.	Name of Exporters M/s	S. B. No./ date	Description of Goods	Assessable value declared (per piece)	Value (per piece) as per market enquiry
1	Wafa International	4477415/02.03.17	Polyester Baby Romper	497	150 - 200

2	- do -	4488745/ 02.03.17	Polyester Frock	582	125 - 150
3	Global Enterprises	4443537/ 01.03.17	- do -	582	150 - 200
4	Super Trading Co.	4477514/ 02.03.17	Ladies Under Garments	265	100 - 125
5	Monarch Collection and Trading	4484298/ 02.03.17	Polyester Baby Romper	493	150 - 200
6	Girri Enterprise	4442876/ 02103.17	Ladies Under Garments	255	100 - 125

2.3.1 From the market enquiries conducted in presence of the authorized representatives of the exporters, i.e., Customs Brokers, it was clear that the goods contained in the shipping bills were overvalued **2 to 6 times** than the prevailing market price. All the shipping bills are filed under the cover of drawback scheme as mentioned in table 1 above.

3. It is brought out that during the course of investigation of the case summons were issued to the aforesaid exporters & Custom Broker under section 108 of the Customs Act, 1962. No Exporter appeared for the statements; however statement of various concerned persons along with the CB employees/authorized person were recorded by Customs Officers. The brief of statements of CB employees are as follows:

3.1 Statement of Shri Sagar Thakker, manager cum authorized person of the Customs Brokers M/s B N Thakker & Company, was recorded under Section 108 of the Customs Act, 1962, before the Custom Officers on 27.04.2017, wherein he inter-alia stated that he is associated as Manager, in M/s B N Thakker and Co; since 2014; that M/s B N Thakker is a partnership firm; that their licence is registered as R/2/1994 at Customs House, Kandla; that he used to supervise all work done by his staff related to export cargo viz. filling of shipping bills, dock examination of goods, stuffing permission by dock preventive; that the aforesaid 06 nos. of shipping bills were filed by them through ICEGATE; that they came to know about the exporters through one forwarder Sh. Manoj Kannar, Director of M/s Samar Shipping; that they are not in direct contact with any of the exporters; that they received whole set of documents viz. Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website; that they had pre-knowledge about overvaluation of the cargo; that Sh. Manoj Kannar had instructed them to file the shipping bills; that they got the approval of the check list for the shipping bills to be filed from Sh. Manoj Kannar; that they filed the shipping bills to cart the cargo since the CFS was not allowing them for carting without filing the shipping bills.

3.2 Statement of Shri Manoj Kannar, Proprietor of M/s Samar Shipping, Gandhidham (FORWARDER), was recorded under Section 108 of the Customs Act, 1962, before the Custom Officers on 28.04.2017, wherein he inter-alia stated that he was doing business related to forwarder from Mundra to almost all locations in the world; that he had done some business with M/s B N Thakker and Co.; that the work related to forwarder (booking of container) of M/s B. N.Thakker used to be done by him; that he was contacted by Shri Sagar Thakker and they finalized the rates of Customs Clearance; that he agreed with the statement dated 27.04.2017 of Shri Sagar Thakker; that one Sh. Dinesh Bhanushali S/o Bhanushali Nanji R/o Managldas Ratadiya Falia, Deriper, Tera, Kachchh, contacted him through his mobile no. 98245 64329, for export of the impugned cargo through Mundra Port; that this was his first dealing and he had not provided any containers to the exporters in past; that the he

had received the set of documents viz. Invoice, packing list, KYC through Shri Dinesh Bhanushali through courier; that he had not seen the cargo.

4. From the scrutiny of the export documents submitted by the exporters, statements & market enquiry, it was revealed that all the exporters wanted to export wearing apparels i.e. Polyester Baby Romper, Polyester frocks and Ladies under Garments to M/s Trends Creations LLC & M/s Trends City General Trading LLC Dubai, UAE. The export cargo was cheap which was not only having low quality but also overvalued by the exporters. The value of the export cargo varied from INR 45 Lac to INR 104.78 Lac and the amount of drawback thereon as claimed by the exporters varied from INR 2.65 Lac to INR 7.92 Lac. Whole of the cargos were being exported to Dubai that too to one company only. Initially the exporters tried to amend the export documents, however, finally three exporters, out of five, surrendered their cargo to Customs for auction purpose willingly.

4.1 During his voluntary statement dated 27.04.2017, Shri Sagar Thakker, authorized signatory of the Customs Brokers admitted that he had not seen the cargo, that the KYC was verified through DGFT Website only; that the documents were received through their forwarders M/s Manoj Kannar, moreover the check list was also got approved from him. Sh. Manoj Kannar in his voluntary statement dated 28.04.2017, admitted that he had not seen the cargo; that the documents were received by him through one Dinesh Bhanushali, that he agreed to the contents of the statement of Shri. Sagar Thakker.

4.2 The Customs Broker M/s B.N. Thakker did not receive the documents directly from the exporters and failed to produce the exporters before the Customs Authorities, they did not check the cargo and received the documents through their forwarder which also had received the documents through another person, which was not found existing at the declared address. The customs broker vetted the check list from the forwarder. Thus none of them knew the exporters personally or had at any point of time were exposed to/ faced the exporters. They had pre-knowledge about overvaluation of the cargo.

4.3 From the foregoing discussions in *para-supra* it appeared that the exporters were members of a syndicate, whose sole intent was to export the impugned cargo and avail drawback. The act of omissions and commissions done by the exporters, the Customs Broker and the forwarder defeat the very purpose of export benefits allowed to the genuine exporters under the Customs Law.

5. Role of M/s B N Thakker & Co., the Customs Broker and Sh. Manoj Kannar (the forwarder):

5.1 Both the above persons were also involved in this syndicate in as much as they produce/cause to produce the impugned cargo before the Customs Authorities, which they knew or had reason to believe, was liable to confiscation, in as much as they did not check the cargo or any sample of it before producing the same to the Customs; none of them had ever met the exporters personally or had verified the antecedents of the exporters through some independent source but for the DGFT website and that is why they failed to produce the exporters before Customs. The Customs Broker verified the check list from Shri Manoj Kannar, who himself getting the documents through another person, which apparently is non-existing. The shipping bills filed by the

Customs Broker on behalf of the exporters read the nature of Contract as CIF which could not be substantiated from other documents viz. the corresponding invoices produced by them along with the cargo. The Customs Broker and the forwarder only negotiated their monetary consideration and were careless about fulfilling the recruitment of law and their statutory duties.

5.2 The act of omissions and commissions committed by the Customs Broker and the forwarder rendered themselves liable to penal action under Section 114 (iii) and 114 AA, of the Customs Act, 1962.

5.3 Accordingly, SCN No. S/15-152/Enq/SIIB/CHM/16-17 dated 07.09.2017 was issued the Exporters & Customs Broker (Co-noticee) under Customs Act, 1962 and same was adjudicated by the Additional Commissioner, Custom House Mundra vide Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, wherein a penalty of Rs. 20,00,000/- (rupees twenty lakhs only) and Rs.5,00,000/- (rupees five lakhs only) were imposed on the Custom Broker M/s B N Thakker and Co., Gandhidham - 370 201 under Section 114(iii) of the CA, 1962 and Section 114AA of the Customs Act, 1962 respectively.

6. From the above it appeared that M/s B. N. Thakker & Company failed to obtain authorization, KYC, other documents from the Importer as they were receiving documents from the middleman/forwarder instead of exporter and also failed due diligence to ascertain the correctness of any information related to Export and Exporter. Further, they also failed to advise their client to comply with provisions of the Customs Act, 1962. The CB knowingly and intentionally involved himself in the export of overvalued goods and used false and incorrect material by filing the Shipping Bills to facilitate the impugned exporters, produced false and incorrect declaration before the department and statements. The shipping bills filed by the Custom Broker on behalf of the exporters declared the terms of payments CIF which could not be substantiated with any other documents as well as the declared value which in itself is misleading and mis-stated. The Customs Broker was evidently careless about fulfilling their statutory duties under CBLR, 2013 as a Custom Broker. Therefore, they failed to observe the obligations entrusted upon them under various clauses of Regulation 10 of the CBLR, 2018.

6.1 As per Regulation 13(12) of Customs Brokers Licensing Regulations, 2018 the Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment. M/s B.N.Thakker & Company failed to supervise the activities of their Manager cum authorised person Shri Sagar Thakker, who indulged in the act of export of cheap quality overvalued goods to facilitate the unscrupulous exporters for self-monetary consideration. Thus, the CB have violated the provision of Regulation 13(12) of CBLR, 2018 (erstwhile Regulation 17(9) of CBLR, 2013).

7. From the above, it appeared that;

7.1 The Custom Broker M/s B.N. Thakker & Company suppressed the material facts from the Customs authorities. They failed to comply with the Regulation **10(a) of CBLR, 2018** (erstwhile regulation 11(a) of CBLR, 2013) in as much as they failed to obtain proper authorization from the exporters (who later were found to be non-

existent) by whom they were employed as Customs Broker for clearance of export of subject goods and therefore, they failed to produce original authorization before the authority during the investigation as well as during the adjudication process.

7.2 They failed to comply with the Regulation **10(d) of CBLR,2018** {erstwhile 11(d) of CBLR,2013} in as much as they failed advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, Kandla regarding the cargo, which is of cheap quality i.e. "MIXED CHINDI" though they are much aware for the cargo as in their written statement they have submitted that after filing of shipping Bills, they received goods through two trucks bearing No. GJ15-YY-9082 and GJ12-AZ-0408 along with manufacturer's invoice issued by M/s. Bhavani Textiles, Bhivandi under which it was mentioned goods description as "MIXED CHINDI". They kept on hold the cargo for further clarification from Shri Manoj Kannar or their exporters instead of informing the facts to the Customs authorities.

7.3 Further, they failed to fulfill the obligation given under Regulation **10(m) of CBLR,2018** {erstwhile 11(m) of CBLR,2013} in as much as they did not inform the facts of mis-declared goods, which were overvalued & of cheap quality, to the Customs Officers immediately and the CB has not endorsed himself at Mundra Commissionerate after formation of Mundra Commissionerate(*which is also a violation of Public Notice No. 01/2014 dated 22.12.2014, vide which all those CBs which were working under Kandla Commissionerate are required to give intimation in Form C at Mundra Commissionerate*) and the CB failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay.

7.4 Shri Sagar Thakker, Manager cum authorized person in his statement admitted that, they had received whole set of documents *viz.* Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website, he was not in direct touch of the exporters. The Customs Broker was supposed to get verify the check list from the exporter instead of Shri Manoj, because Shri Manoj Kannar was getting the documents from another persons, who were non-existing. Further, even after getting notice of fraudulent attempt of export by the exporters, the CB has never tried to contact the exporters nor they got done the verification of the existence of the exporter company. From the records it is not forthcoming that after receiving documents from Shri Manoj Kannar, the CB had ever tried to contact the exporters. The CB had not verified the antecedent, identity of the exporters and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, particularly when the exporters had not approached the CB directly for their export work. Online verification of IEC only is not sufficient to verify antecedent because IEC is given by DGFT online without verification of clients. Thus, the CB has contravened the provisions of regulation **10(n) of CBLR,2018** {erstwhile regulation 11(n) of the CBLR, 2013}.

8. In view of the facts enunciated above, the Custom Broker License No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E) of the CB M/s B. N. Thakker & Company was placed under immediate suspension as per Regulation 16(1) of Customs Brokers Licensing Regulations (CBLR),2018 read with Regulation 10 of CBLR, 2018 to prevent further misuse of the Customs Broker Licence and to safeguard the interest of

revenue vide Order-in-Original No. KND-CUSTOM-000-COM-01-2019-20 dated 11.04.2019.

8.1 In exercise of powers conferred under Regulation 16(2) of CBLR, 2018 a post decisional hearing was granted on 22.04.2019 to the said Customs Broker-M/s B.N. Thakker and Company, Gandhidham.

9. DEFENCE REPLY AND PERSONAL HEARING

9.1 Shri Kiran Thakker (Partner) and Shri Sagar Thakker (Manager) of M/s B. N. Thakker and Company, Gandhidham appeared for Personal hearing. During the course of Personal Hearing, they submitted a written reply (letter dated 22.04.2019) and reiterated the contents therein. They have nothing further to add. In written reply dated 22.04.2019, they stated that;

(i) The allegation regarding breach of Regulation 10(a) of CBLR, 2018 is factually incorrect in as much as they had obtained authorization from all the exporters and the same were tendered before the Custom officer who recorded statement of Shri Sagar Thakkar, their Authorized Person on 27.04.2017. His answer to Q.6 in the statement dated 27.04.2017 is reproduced below for the ease of ready reference:

“Q.6. Did you obtain authorization from above exporter?”

Ans. Yes.”

Thus, it is their humble submission that authorizations were duly tendered and hence, their CB licence may not be suspended on the ground of non-obtaining authorization. Copy of authorization obtained from all 05 exporters is enclosed herewith for the ease of ready reference.

(ii) As regard to inference regarding breach of Regulation 10(d) of CBLR, 2018, it is their respectful submission that the exporters were advised to comply with the provisions of Customs Act, 1962 through the forwarder who had brought the CB business to M/s. BNT. It may be kindly appreciated from the decision of Hon'ble Tribunal in the case of Cargo Concept (Bombay) Pvt. Ltd. v/s Commissioner of Customs (Gen.), Mumbai, 2016 (344) E.L.T. 954 (Tri.-Mumbai) where Hon'ble Tribunal has also appreciated that it is general practice in the CHA (now CB) business that CHA work is brought by the various intermediaries.

(iii) Further, it is not correct to hold that acting as CB, after receiving manufacturer's invoice describing the goods as "mixed chindi", M/s. BNT had kept the goods on hold instead of informing the customs authorities about it. They take this opportunity to invite kind attention of department to the following reply given by Shri Sagar Thakker, Authorized Person of M/s. BNT to Q.12 put to him in the course of recording his statement dated 27.04.2017:

“Q.12. Did you have the pre-knowledge about overvaluation of goods?”

Ans. No. As and when cargo was carted in the CFS we have immediately informed to the exporter that we will not clear the cargo further and informed the customs therefore no examination of cargo was done by the customs.”

There is no denial to the above facts in the impugned order. Hence, it is their humble submission that suspension for this reason needs to be vacated.

(iv) As regard to the allegation that M/s. BNT did not inform the Customs authority regarding mis-declared goods and hence, there was breach of Regulation 10(m) of CBLR, 2018, it may be appreciated from the reply reproduced above that M/s. BNT had no prior knowledge about the incriminating nature of the goods and no sooner, they learnt about it, they had immediately informed the department. The above facts stated by Shri SagarThakker have not been denied in the impugned order. Hence, it cannot be alleged or held that M/s. BNT had failed to inform the Customs authority regarding incriminating nature of goods. Hence, suspension of CB licence on this ground may be vacated.

(v) With regard to allegation regarding non-compliance to Regulation 10(n) of CBLR,2018, they have submitted that M/s. BNT have complied with the guidelines contained in Board's Circular No. 9/2010-Cus., dated 8.4.2010 with regard to Client/Customer Identification Procedure. As per Circular No. 9/2010-Cus, dated 08.04.2010, any two of the documents listed in the annexure is required to be verified by Custom Broker. Accordingly, PAN card and bank account certification given by respective bank authority was duly verified by M/s. BNT. The note in column 3 of Sl. No. 1 of the annexure clarifies that any two of the documents which provides client/customer information to the satisfaction of the CHA (now CB) will suffice. Thus, in the face of successful verification of PAN card and bank account done at their end, suspension of their CB licence on the ground of non-fulfillment of Regulation 11(n) of CBLR,2013 may be vacated. Copy of PAN card and bank account certificates for all 05 exporters is enclosed.

(vi) Thus, it is most humbly submitted that there is no breach of Regulation 10 (a), (d), (m) and (n) of CBLR,2018. They sincerely regret for having missed out on Public Notice No. 01/2014 dated 22.12.2014 and file intimation in Form-C with Customs Commissionerate, Mundra. It is their humble submission that due to oversight, the required intimation was not filed. However, the same may not be considered as a fatal mistake warranting immediate suspension in the backdrop of the fact that shipping bills filed by M/s. BNT with Custom House, Mundra in their capacity as CB over all these years have been duly accepted and assessed in accordance with law. M/s. BNT were never prompted by the EDI system. It was out of a genuine bona fide mistake that they missed out on filing the intimation in Form-C. Having said this, it is humbly submitted that this bona fide error which continued for over four years does not deserve to be meted out with immediate suspension of their CB licence. They are taking immediate steps to comply with the Public Notice. The bona fide mistake that has occurred in this regard may kindly be condoned.

(vii) The allegation contained in para 6.1 of the impugned order against Shri Sagar Thakker, Manager-cum-Authorized Person of M/s. BNT are not supported by his statement dated 27.04.2017 that was recorded by Customs officers during the course of investigation. As a matter of fact, he has stated that he had duly informed the Customs about the incriminating nature of goods.

(viii) Without prejudice to the submissions made herein above, M/s. BNT would say and submit that the decision to suspend their CB licence with immediate effect is not in conformity with the guidelines circulated by Board vide Circular No. 9/2010-Cus., dated 8.4.2010.

Relevant extract is reproduced below for the ease of ready reference:

Para 7.2 of Circular No. 09/2010-Cus dated 08.04.2010 - In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him."

Thus, department may kindly appreciate that investigating authority was required to furnish report within 30 (thirty) days of the detection of offence and it was on the basis of this report that Licensing authority could have taken necessary action. In this case, offence was detected on 10.03.2017 (seizure memo dated 10.03.2017 refers). After completion of investigation, show cause notice was issued on 07.09.2017. The investigating authority was required to furnish report within 30 days of the detection of offence, i.e. 30 days from 10.03.2017. However, the order for immediate suspension is not based on the offence report (which should have been issued within 30 days of 10.03.2017) but the same is based on Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019 (which is not offence report) that was received on 26.03.2019 (i.e. after two years of the detection of offence). Thus, immediate suspension is not in accordance with the time line decided by Board. Therefore, on this ground, the immediate suspension is liable to be vacated.

(ix) In all, department may kindly appreciate from the above submissions that there is no violation of Regulation 10(a),(d),(m) and (n) of CBLR,2018. In view of above, it is prayed that the above submissions may be given due consideration and the immediate suspension of CB licence issued to M/s. BNT may kindly be revoked by taking a considerate and sympathetic view of the case.

10. DISCUSSION AND FINDING

10.1 I have carefully gone through the case records; including OIO No. MCH/ADC/PK/114/2018-19 dated 26.02.2019; suspension order dated 11.04.2019 and written submissions made Shri Kiran Thakker, Partner of M/s B N Thakker & Company, Gandhidham.

10.2 I find that a final offence report comprising Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, was received on 26.03.2019 from the Additional Commissioner (CBS), Custom House Mundra vide F.No. S/07-46/Misc-CB/CHM/2018-19 dated 15.03.2019, outlining the role of the Custom Broker in the case of export of cheap quality overvalued goods viz Polyester Baby Rompers, Polyester frock, Ladies undergarments with an intention to avail higher amount of drawback

and for the necessary action against the CB M/s B. N. Thakker and Company under Customs Brokers Licensing Regulations, 2018.

10.2.1 It is also brought out that, the Additional Commissioner, Custom Mundra vide Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019 imposed penalty of Rs. 20,00,000/- (rupees twenty lakhs only) and Rs. 5,00,000/- (rupees five lakhs only) on the Custom Broker M/s B N Thakker and Co., Gandhidham – 370 201 under Section 114(iii) of the CA, 1962 and Section 114AA of the Customs Act, 1962 respectively.

10.3 I find that during the investigation the authorized person, Shri Sagar Thakker of the CB was asked whether they had obtained authorization from the exporters, he said yes. But when he was asked about details of documents received for filing of shipping bills, he stated that the CB had received invoice, packing list, KYC from Shri Manoj Kannar a Forwarder. They did not receive the documents directly from the exporter (who later were found to be non-existent at the given address). I find that the CB had produced all the export related documents but not produced the authorization letter during investigation nor during adjudication process. Even in written submission, the CB has submitted that Shri Manoj Kannar (Forwarder) has given them export documents for the total five exports and asked them to file total six shipping bills. However, now the CB have produced the authorization letters of the exporters (which were found to be non-existent at the given address), having same or nearby date and also in similar phrasing, appeared to be received later on (not available at the time of filing of Shipping Bill). Thus, I find that the CB did not obtain proper authorization from the exporters by whom they were employed as Customs Broker for clearance of export of subject goods and therefore, I find that CB failed to comply with the Regulation **10(a) of CBLR, 2018** {erstwhile regulation 11(a) of CBLR,2013}.

10.4 I find that (para 28.2 of impugned OIO dated 26.02.2019) the CB, vide his written submission submitted that after filing of shipping Bills, they received goods through two trucks bearing No. GJ15-YY-9082 and GJ12-AZ-0408 along with manufacturer's invoice issued by M/s. Bhavani Textiles, Bhivandi under which it was mentioned goods description as "MIXED CHINDI", they kept on hold the cargo for further clarification from Shri Manoj Kannar or their exporters. Further, I find that in general practice CB work may be brought by the intermediaries but they (CB) must know about his client (Exporter/Importer), however in this case they have received documents from Shri Manoj Kannar (Forwarder) only; CB was not in direct touch of the Exporter. I find that it was the obligation on the CB to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs in case of non-compliance, or mis-declaration of goods instead of informing to Shri Manoj Kannar or the exporters. Thus, the CB has contravened the provisions of **10(d) of CBLR, 2018** {erstwhile regulation 11(d) of CBLR,2013}.

10.5 I find that CB did not inform the facts of mis-declared goods, which were overvalued & of cheap quality, to the Customs Officers immediately and the CB has not endorsed himself at Mundra Commissionerate after formation of Mundra Commissionerate (*which is also a violation of Public Notice No. 01/2014 dated 22.12.2014, vide which all those CBs which were working under Kandla Commissionerate are required to give intimation in Form C at Mundra Commissionerate*). I find that CB in their written submission letter dated 22.04.2019 (Para 7) admitted

that due to oversight, the required intimation was not filed by them. They regret for having missed out on Public Notice No. 01/2014 dated 22.12.2014 and file intimation in Form-C with Customs Commissionerate, Mundra. I find that the CB failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay. Thus, I find that CB failed to fulfill the obligation given under Regulation **10(m) of CBLR,2018** {erstwhile 11(m) of CBLR,2013}.

10.6 CB in their written submission dated 22.04.2019 stated that they have complied with the guidelines contained in Board Circular No. 09/2010- Cus. Dated 08.04.2010 as they have verified PAN Card & Bank Account Certification, however I find that Shri Sagar Thakker, Manager cum authorized person in his statement admitted that, they had received they received whole set of documents viz. Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website, he was not in direct touch of the exporters. The Customs Broker was supposed to get verify the check list from the exporter instead of Shri Manoj, because Shri Manoj Kannar was getting the documents from another persons, who were non-existing. Further, even after getting notice of fraudulent attempt of export by the exporters, the CB has never tried to contact the exporters nor they got done the verification of the existence of the exporter company. From the records it is not forthcoming that after receiving documents from Shri Manoj Kannar, the CB had ever tried to contact the exporters. The CB had not verified the antecedent, identity of the exporters and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, particularly when the exporters had not approached the CB directly for their export work. I find that online verification of IEC only is not sufficient to verify antecedent because IEC is given by DGFT online without verification of clients. Thus, I find that the CB has contravened the provisions of regulation **10(n) of CBLR,2018** { erstwhile regulation 11(n) of the CBLR, 2013}.

10.7 I, further find that final offence report comprising Order-In-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, was received on 26.03.2019 from the Additional Commissioner (CBS), Custom House Mundra vide F.No. S/07-46/Misc-CB/CHM/2018-19 dated 15.03.2019. Accordingly, for the contravention of provisions of Regulation 10(a),10(d), 10(m) & 10(n) of CBLR,2018 (erstwhile regulation 11(a),11(d), 11(m) & 11(n) of CBLR,2013; Customs Broker License was suspended vide OIO No. KND-CUSTM-000-COM-01-2019-20 dated 11.04.2019 and in terms of Regulation 16(2) of CBLR, 2018 a post decisional hearing was granted to the said Customs Broker - M/s B. N. Thakker and Company, Gandhidham within the stipulated time period.

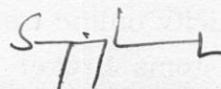
11. In view of facts enunciated above, I find that the written submission dated 22.04.2019 made by the CB are not substantial and thus, I find that Customs Broker has violated the provisions of Regulation 10(a),10(d), 10(m) & 10(n) of CBLR,2018 (erstwhile regulation 11(a),11(d), 11(m) & 11(n) of CBLR,2013).

12. Now, the suspension of the CB Licence has been reviewed by me and considering the gravity of offence, I am of the considered opinion that the licence of the CB is required to be placed under continued suspension in terms of Regulation 16(2) of CBLR, 2018 read with Regulation 10 of CBLR, 2018 to prevent further misuse of the Customs Broker Licence and to safeguard the interest of revenue.

In view of the above discussion, I pass the following order.

ORDER

I, Sanjay Kumar Agarwal, Principal Commissioner of Customs, Custom House Kandla, in exercise of powers conferred under Regulation 16(2) of the CBLR, 2018 read with Regulation 10 of CBLR, 2018, hereby order and confirm the suspension of the Custom Broker License No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E) issued to M/s B. N. Thakker and Company, Room No. 207, 2nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch-370201, issued vide Order-in-Original No. KND-CUSTM-000-COM-01-2019-20 dated 11.04.2019, until further orders.



(SANJAY KUMAR AGARWAL)
Principal Commissioner

F.No. S/7-57/CHA/2005

Date : 30.04.2019

To

M/s B. N. Thakker and Company,
Room No. 207, 2nd Floor,
Nilesh Park Building,
Behind KDBA Gymkhana,
Gandhidham, Kutch -370201

Copy to :-

1. The Chief Commissioner of Customs, Custom Gujarat Zone, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House **Mundra** for the information and necessary action.
3. The Principal Commissioner/Commissioner of Customs, New Custom House, Ballard Estate, **Mumbai** for the information and necessary action.
4. All Section Heads, Custom House, Kandla.
5. The Joint Commissioner of Customs, EDI Section, Custom House, Kandla for the information & necessary action.
- ✓ 6. Office copy.
7. Notice Board