



OFFICE OF THE PR. COMMISSIONER  
CUSTOM HOUSE, KANDLA  
NEAR BALAJI TEMPLE, NEW KANDLA  
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A	फाइल संख्या/ File No.	S/7-57/CHA/05
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-11-2019-20
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPAL COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	29.10.2019
E	जारी करने की दिनांक/Date of issue	29.10.2019
F	कारण बताओ नोटिस, दिनांक/ Show Cause Notice No. & date	F. No. S/7-57/CHA/2005 dated 21.05.2019
G	नोटीसी पार्टी /Noticee/Party	M/s B. N. Thakker and Company, Room No. 207, 2 <sup>nd</sup> 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, द्वाितीय तल, 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 BhavanAsarwa,  
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 शुल्कका %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 17 of CBLR,2018 ( erstwhile regulation 20 of CBLR,2013) against M/s B. N. Thakker and Company.**

**BRIEF FACTS OF THE CASE:**

M/s B. N. Thakker and Company, Room No. 207, 2<sup>nd</sup> 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 the 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 letter 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 An specific information was received that some unscrupulous exporters were 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 covered 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. Whereas 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 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 checked 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 cheap cargo and avail government incentives in the form of 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 to 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 appears 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 have 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 has violated the provision of Regulation 13(12) of CBLR,2018 (erstwhile Regulation 17(9) of CBLR, 2013).

**7. From the above, it appears 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; CB have received



documents from Shri Manoj Kannar (Forwarder) only; CB was not in direct touch of the Exporter.

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. The 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. The CB failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay and failed to fulfill the obligation given under Regulation 10(m) of CBLR,2018 {erstwhile 11(m) of CBLR,2013}.

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, it appears that the CB has contravened/failed to comply with provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of Customs Brokers Licensing Regulations, 2018 (erstwhile regulation 11(a), 11(d), 11(m) & 11(n) of CBLR,2013) and 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-CUSTM-000-COM-01-2019-20 dated 11.04.2019 and confirmed the continued suspension vide OIO No. KND-CUSTM-000-COM-02-2019-20 dated 30.04.2019 by the Principal Commissioner of Customs, Custom House Kandla.

9. As per Regulation 17 of CBLR,2018 - Procedure for revoking license or imposing penalty:

(1) *The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*

(2) .....

(3) *The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or Material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.*

(4).....

(5).....

(6) .....

(7) .....

(8) .....

(9) .....

9.1 As per Regulation 14 of Customs Brokers Licensing Regulations, 2018, the Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds, namely:—

(a) *failure to comply with any of the conditions of the bond executed by him under regulation 8;*



(b) *failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;*

(c) commits any misconduct, *whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;*

(d) -----

----- or otherwise.

9.2 *As per Regulation 18 of CBLR,2018, the Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.*

10. As mentioned in previous Para that the CB has contravened/failed to comply with the provisions of Regulation 10 of Customs Brokers Licensing Regulations, 2018 (erstwhile regulation 11 of CBLR,2013) and the deliberate acts and omissions on the part of said Customs Broker have rendered themselves liable for penal action under Regulation 18 of CBLR,2018 including revocation of license, forfeiture of part or whole of security under regulation 14 of CBLR,2018 read with regulation 17 of CBLR,2018.

11. Accordingly, in terms of provisions of Regulation 17 of Customs Broker Licensing Regulation (CBLR), 2018, M/s B. N. Thakker and Company, Room No. 207, 2<sup>nd</sup> Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201, holding Custom Broker License No.CHA/KCH/R/ 2/1994 (PAN No. AACFB1035E) dated 15.03.1994, were called upon by SCN F. No. S/7-57/CHA/2005 dated 21.05.2019 answerable to the Principal Commissioner of Customs, Custom House Kandla as to why;

(i) The Customs Broker Licence No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E) issued to them should not be revoked under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with regulation 17 of CBLR,2018.

(ii) The security furnished by the Customs Broker for issuance of Broker Licence No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E), should not be forfeited under Regulation 14 of CBLR, 2018 read with regulation 17 of CBLR, 2018.

(iii) Penalty should not be imposed on them in terms of Regulation 18 of Customs Brokers Licensing Regulations,2018 read with Regulation 17 of CBLR,2018 for failure to comply with provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of CBLR,2018 (erstwhile regulation 11(a), 11(d), 11(m) & 11(n) of CBLR,2013.)

12. Also in terms of Regulation 17 of Customs Brokers Licensing Regulations, 2018 (erstwhile regulation 20 of CBLR,2013), Shri Kiran Mohan Mohadikar, Deputy Commissioner of Customs, Custom House Kandla has appointed as the inquiry Officer in this case.

13. The Inquiry Officer has submitted his inquiry report to the Principal Commissioner of Customs, Customs House Kandla vide letter dated 16.08.2019.

**Defense submission and Personal Hearing before the Inquiry Officer:**

13.1 As per Regulation 17 of CBLR, 2018, the CB was given opportunity to submit written defense reply and to specify their desire to be heard in person vide letter dated 18.07.2019, 25.07.2019 and 01.08.2019). Vide a letter dated 15.07.2019 the CB requested that the Personal Hearing be scheduled on 22.08.2019, but they agreed to attend the Personal Hearing on 07.08.2019. The CB has submitted their defense reply on 04.07.2019 before the inquiry officer wherein:-

- They have denied violating any provisions of Regulation 10 (a),(d),(m) and (n) of CBLR,2018.
- Submitted the authorizations obtained from respective exporters and claimed that they have informed the Customs officers about the incriminating nature of Goods prior to examination of the same.
- 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.
- That the CB expressed sincere regret for having missed Public Notice No. 01/2014 dated 22.12.2014 and filling of intimation in Form-C with Customs House, Mundra.

14. The Inquiry Officer has gone through the case records, statements recorded and other material evidences available and submission made at the time of PH. The Inquiry Officer has held that the charges framed out in SCN dated 21.05.2019 are proved on the following grounds:-

14.1 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}.

The inquiry officer has found that the CB has submitted the Authority Letters obtained from the Exporters, but they have not produced any email or postal communication as to prove that when the Authorizations indeed received prior to filling of Shipping Bills. Also all Authorizations have similar wordings and all are dated 10.02.2017 except M/s. Wafa International is dated 13.02.2017. Thus all are of around the same date. Further as already established that all the documents were received by the CB through Shri Manoj Kannar a Forwarder, who in turn, received them from Shri Dinesh Bhanushali through courier, who is not traceable. Also As already established that the Exporters are nonexistent at their declared



addresses. Thus, they failed to comply with the Regulation 10(a) of CBLR, 2018 (erstwhile regulation 11(a) of CBLR, 2013).

**14.2** The Custom Broker M/s B.N. Thakker failed to comply with the Regulation 10(d) of CBLR, 2018 (erstwhile 11(d) of CBLR, 2013).

The inquiry officer has found that 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 miss-declaration of goods instead of informing to Shri Manoj Kannar or the exporters. The CB stated that they had informed the Custom Officers about the nature of the goods but they did not substantiate it with any documentary proof. Thus, the CB has contravened the provisions of 10(d) of CBLR, 2018 (erstwhile regulation 11(d) of CBLR, 2013).

**14.3** The Custom Broker M/s B.N. Thakker & Company failed to fulfill the obligation given under Regulation 10(m) of CBLR, 2018 (erstwhile 11(m) of CBLR, 2013).

The inquiry officer has found that the CB has submitted in their defense reply dated 04.07.2019 that 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. Thus the CB failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay.

**14.4.** The Custom Broker M/s B.N. Thakker & Company has contravened the provisions of regulation 10(n) of CBLR, 2018 (erstwhile regulation 11(n) of the CBLR, 2013).

The inquiry officer has found that the CB had never 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 Brokers 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 Brokers 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 scrutiny of the documents revealed that the 06 nos. of aforesaid shipping bills were filed under mentioning the nature of contract on CIF basis, whereas the exporters had not mentioned the Insurance or freight in their invoices. The invoices read the nature of contract as 180 days DA Basis. Further, the inquiry officer found that the Customs Broker and the forwarder only negotiated their monetary consideration and were careless about fulfilling the requirement of law and their statutory duties. In the light of the aforesaid facts and circumstances of the case, all the aforesaid 05 exporters were working for a common

syndicate. The modus operandi adopted by the exporters was to procure a cargo which was cheap not only in terms of value but also in terms of quality and overvalue the same to avail higher amount of drawback. In case an alert Customs officer stops them they would make excuses and would bring another set of invoices in order to export the cargo. They used to operate from an address which though exists but is a residential complex and no commercial activities are running over there, so that the authorities could not catch them, if the cargo is put on hold. Finally they would surrender the cargo to the Customs, if they could not find any other way out and the work of the Exporters was further made easy by the CB by not staying alert and prompt towards their duties and obligations as enumerated in regulation 10(n) of CBLR, 2018 { erstwhile regulation 11(n) of the CBLR, 2013}.

**Conclusion of Inquiry Officer:**

15. After careful consideration of the facts and circumstances of the case and to the Personal Hearing, without prejudice to anyone involved or connected with the inquiry, the inquiry officer has concluded that, the CB M/s B.N. Thakker & Company, are found guilty of violations of obligations under provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of CBLR, 2018.

**Defense submission/representation & Personal Hearing:**

16. As per CBLR provisions, a copy of Inquiry Report dated 16.08.2019 was shared with the CB vide letter dated 21.08.2019 at their registered address and the same was also communicated vide email dated 21.08.2019 and they were requested to submit their defence/representation, if any, against the Inquiry Report within stipulated time period as prescribed under regulation 17(6) of CBLR, 2018. Subsequently, the CB vide letter dated 10.10.2019 submitted their defense reply. Further, opportunity of Personal Hearing was accorded to CB/their representative for their appearance on 10.10.2019. An authorised representative of the CB appeared on 10.10.2019 for PH and also made an additional written submission and reiterated the contents therein. The CB M/s B.N. Thakker & Company has challenged the SCN and enquiry report on the following grounds:-

- That as per Para 11.1.2 of the Inquiry report, the inquiry officer has observed that the notice has not submitted the authority letter received from exporter and all authorization have similar wording and all are of same date. That the CB has received all documents including KYC, authorization, invoices, packing list etc. for clearance through Shri Manoj Kannar only. In the instant matter M/s. B. N. Thakkar Co. availed proper authorization from all five exporters to act as customs broker on their behalf as mentioned above before filing Shipping Bills on their behalf under Section 50 of the Customs Act through ICEGATE. The above mentioned documents received from all five exporters were submitted by Shri Sagar Thakkar on April 27, 2017 while recording the



statement under Section 108 of the Customs Act. Therefore, the Noticee, being a customs broker has complied with Regulation 10(a) of the CBLR, 2018.

- That Para. 11.2.1, of the Inquiry report does not hold as to bring any non-compliance to notice of the Customs Department, the knowledge of such non-compliance on part of the customs broker is must. In the instant matter, as on date of receipt of knowledge on part of the Noticee, the Customs Department was already aware about the over-valuation of export cargo as alleged in the Notice, therefore there is no question of bringing the same to notice of Customs Department again. The Noticee had no pre-knowledge about overvaluation of export cargo and as and when the Noticee became aware about the issue with the cargo, the Customs Department was already-aware about the same. Accordingly, as the Noticee had no information /knowledge about overvaluation of export cargo, there is no question of violation of Regulation 10(d) of the CBLR.
- That in para. 11.3.1. the Inquiry Officer has observed that the Noticee regret having missed out on Public Notice No. 1/2014 dated December 22, 2014 and file intimation under Form-C with Customs Commissionerate, Mundra. In this regard it is submitted that the Noticee inadvertently due to oversight have not filed intimation under Form C of the CBLR to the Customs Commissionerate, Mundra before acting as customs broker for clearance of cargo at Mundra port. It is submitted that due to bonafide mistake the Noticee have not filed said intimation with the Customs Commissionerate, Mundra in terms of the CBLR. Accordingly, for the said on-compliance the Noticee hereby tenders unconditional apology before your good self
- In regard to Para. 11.4.1 of the Inquiry Report that the CB stated that Regulation 10(n) of the CBLR obligates the customs broker to verify the correctness of IEC, GSTIN, functioning of client at declared address by using reliable, independent, authentic documents, data or information. The customs broker is under an obligation to verify the details of client before acting as customs broker on their behalf. In the instant matter, the Noticee availed above mentioned documents which included KYC, authorization to act as customs broker along with declaration under the Customs Act, certificate of Importer Exporter Code issued by the Office of Additional Director General of Foreign Trade, Mumbai, registration certificate of establishment issued under the Maharashtra Shops and Establishment Act, 1948, letters issued by the respective banks of exporters verifying the bank account details and postal address of exporters and photo identity card of concerned authorized person of exporters. It is submitted that Regulation 10(n) nowhere obligates the customs broker to verify the correctness of the address of the client by visiting the said premises of establishment

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- That the findings in the Inquiry Report are not based or supported by any of the documentary evidence. It is submitted that the Inquiry Officer has merely stressed on the fact that the Notice was not in direct contact with exporters and received all documents from Sh. Manoj Kannar instead of exporters.
  - That Sh. Sagar Thakkar authorised person, of the Noticee in his statement has specifically admitted to the fact that the Noticee had availed authorization from the exporters before filing Shipping Bills on their behalf. It is submitted that the Notice nowhere specify as on what basis it has been alleged that the Noticee has failed to obtain proper authorization from exporters. In the Notice mere allegation has been made that proper authorization was not availed without any reasoning and justification to support the same. The Noticee being a customs broker had availed KYC and authorization from all exporters before filing Shipping Bills on their behalf under Section 50 of the Customs Act. Therefore, the Noticee as a customs broker by obtaining proper authorization and other documents from exporters has complied with Regulation 10(a) of the CBLR.
  - The Noticee with bonfide belief after receiving necessary KYC and authorization and verifying the same through independent sources including website of DGFT, registration certificate of establishment under the Maharashtra Shops and Establishment Act, 1948 filed Shipping Bills on behalf of exporters through ICEGATE. The Noticee had no pre-knowledge about overvaluation of export cargo and as and when the Noticee became aware about the issue with the cargo, the Customs Department was already aware about the same. Immediately on being aware about issues with cargo, the Noticee specifically informed the Customs Department and exporters that Noticee will not clear the export cargo. Accordingly, as the Noticee had no information/ knowledge about overvaluation of export cargo, there is no question of violation of Regulation 10(d) of the CBLR.
  - That in the instant matter, the Noticee as a customs broker has immediately on receipt of information about issue with cargo had specifically informed the Customs Department and the exporters that it will not clear the cargo, in consequence of which the examination of cargo was not conducted by the Customs Department. Further it is worth to mention here that in the Notice, the learned authority has not provided any instance on part of the Notice on basis of which it has been alleged that the Noticee was aware about the overvaluation of export cargo. Therefore, it would not be out of place to mention here that the Noticee being a customs broker has immediately on being aware about the issue with cargo has efficiently took preventive steps to prevent any further violation of provisions of the Customs Act by specifically communicating the Customs Department as well as the exporters that M/s. B.N. Thakkar & Co. will not clear the cargo. Therefore, there is no violation of Regulation 10(m) of the CBLR as alleged.



- That in the instant matter, the Noticee availed documents which included KYC, authorization to act as customs broker along with declaration under the Customs Act, certificate of Importer Exporter Code issued by the Office of Additional Director General of Foreign Trade, Mumbai, registration certificate of establishment issued under the Maharashtra Shops and Establishment Act, 1948. Letters issued by the respective banks of exporters verifying the bank account details and postal address of exporters and photo identity card of concerned authorized person of exporters and Regulation 10(n) nowhere obligates the customs broker to verify the correctness of the address of the client by visiting the said premises of establishment. Therefore, it would not be out of place to submit here that the Noticee has relied upon independent and authentic documents such as registration certificate of established issued by statutory authority of the Maharashtra State Government under the Maharashtra Shops and Establishment Act 1948 and letters issued by the respective banks along with stamp and signature of authorized office of said banks wherein postal address of respective exporters are mentioned. The Noticee being customs broker has verified the specified mandatory details of all five exporters from such independent and authentic sources before acting as their customs broker and filing Shipping Bills under Section 50 of the Customs Act. Further the customs brokers are under an obligation to avail any of the two documents for verification of information and details of client as specified in the annexure to the Circular No. 9/2010. In the instant matter, the Noticee availed bank account verification from respective banks of exporters, photo identity of concerned person of exporters along with registration certificate of establishment under the Maharashtra Shops and Establishment Act, 1948 for verification and identification of the said exporters before filing shipping Bills on their behalf through ICEGATE. Therefore, they have complied with regulation 10(n) of CBLR, 2018.
- That the Custom Broker License of M/s. B. N. Thakkar and Co. is not liable to be revoked under regulation 17 of CBLR, 2018.
- That Shipping Bills were filed on March 1 and 2, 2017 and subsequently market enquiries and seizure of cargo was done by the Department. Even the Notice dated September 7, 2017 was issued based on allegations made therein thereby proposing to impose penalty on the Noticee under Section 114 and 114AA of the Customs Act. However the proposed actions for revocation of customs broker license of the Noticee has been proposed vide the Notice dated May 21, 2019. The Department was aware about the said export transaction since March 2017 and in consequence of which adjudication proceedings in respect to impose penalty under the Customs Act was initiated on September 7, 2017 and the same was concluded vide OIO dated February

26, 2019. However, proceedings under the Notice in respect to violation/ contraction of provisions of the CBLR thereby proposing to revoke customs broker license of the Noticee and to impose penalty was issued on May 21, 2019 after such long time period of around 2 years. It would not be out of place to submit here that the Department was already in knowledge of the export transaction since March 2017, according proceedings under the Notice for revocation of customs broker license initiated after expiry of 90 days is illegal and unsustainable.

- That in absence of any corroborating evidence in support of allegation in the notice, penalty under regulation 18 of CBLR, 2018 cannot be imposed.
- That they have relied upon various case laws.

**Discussion and Findings:-**

17. I have carefully gone through the available case records, SCN, Inquiry Report submitted by the Inquiry Officer, submission made by the CB alongwith additional submission at the time of PH. I find that the authorised representative of CB, M/s B.N Thakkar & Co and appeared on PH in terms of regulation 17(7) of Custom Brokers Licensing Regulation, 2018 and made an additional written submission on 10.10.2019.

18. I find that the moot issue regarding allegations leveled in the Show Cause Notice is with regard to contravention of provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of CBLR, 2018 by the Customs Broker, which render them liable for action under Regulation 14 of CBLR, 2018 read with Regulation 17 & 18 ibid including revocation of license, forfeiture of part or whole of security & imposition of penalty.

18.1 I find that that on the basis of a specific information that some 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 cargos covered under 06 shipping bills and seized the Goods. From the market enquiries conducted in presence of the authorized representatives of the exporters, i.e., Customs Brokers, M/s B. N. Thakkar & Co, it was found that the goods contained in the shipping bills were overvalued 2 to 6 times than the prevailing market price. All the shipping bills were filed under the cover of drawback scheme. It has been alleged in the Show Cause Notice that instead of bringing the matter to the notice of department, the CB knowingly and intentionally involved in illegal clearance of export consignment.

19. I find that during the course of investigation of the case; 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 and 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 with respect to the import of the subject consignments, which is admissible in evidence as per Apex Court decision in the case of Asstt. Collr. Of C. Ex., Rajamundry Versus Duncan Agro Industries Ltd reported at 2000 (120) E.L.T. 280 (S.C.). Further, in the case of 'Naresh J. Sukhawani Vs. Union of India' - reported at 1996 (83) ELT 258 (S.C.), Hon'ble Supreme Court held that the statement made before the Customs officials is not a material statement recorded under Section 161 of the Criminal Procedure Code, 1973. It is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act. That material incriminates the petitioner inculcating him in contravention of the provisions of the Customs Act. Further, in case of Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Supdt. Of Cus., Marmgoa reported at 2001 (134) ELT 3 (S.C.), Hon'ble Supreme Court held that a statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculcating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act. Therefore, I hold that all the Statements recorded under Section 108 of the Customs Act, 1962 in this case are admissible as evidence.

20. The Show Cause Notice dated 21.05.2019 was issued to the CB for alleged contravention of provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of CBLR, 2018. Accordingly, I proceed to discuss all the issues raised in Show Cause Notice with relevant provisions of CBLR, 2018 and findings of Inquiry Officer, and defense submission by the CB along with the addition submission at the time of PH.

20.1 The CB has claimed that the Notice as a customs broker has obtained proper authorization and other documents from exporters has complied with Regulation 10(a) of the CBLR. I find that, the CB has submitted the Authority Letters obtained from the Exporters, but they have not produced any email or postal communication as to prove that when the Authorizations indeed received prior to filling of Shipping Bills. I also find that all Authorizations have similar wordings and all are dated 10.02.2017 except M/s. Wafa International is dated 13.02.2017. Thus all are of around the same date. Further, as already established that all the documents were received by the CB through Shri Manoj Kannar a Forwarder, who in turn, received them from Shri Dinesh Bhanushali through courier, who is not traceable. As per OIO dated 26.02.2019 passed by the Adjudicating Authority, all the addresses of the exporters found fake during the course of investigation and none of the Exporters presented during the course of investigation as well adjudication. Further, I also found that the CB tried to twist the matter by requesting to postpone the date of hearing on behalf of the exporter, however, the CB was never in contact with the exporters. I find that since the Exporters are nonexistent at their declared addresses. Thus, I hold that the CB failed to comply with the Regulation 10(a) of CBLR, 2018 (erstwhile regulation 11(a) of CBLR, 2013) as leveled against the CB in SCN.

20.2 As regards, the CB has claimed that as they had no information/knowledge about overvaluation of export cargo, there is no question of violation of Regulation 10(d) of the CBLR. I find that they received goods in the Mundra CFS, Mundra Port 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 i.e. Deputy Commissioner of Customs or Assistant Commissioner of Customs. The CB has stated that they had informed the Custom Officers about the nature of the goods but they had not substantiated it with any documentary proof. It is afterthought of the CB as they had pre-knowledge of the cargo. The above facts come to knowledge of the Department only after receiving specific intelligence but not through the CB. Thus, I hold that the CB has contravened the provisions of 10(d) of CBLR, 2018 {erstwhile regulation 11(d) of CBLR, 2013} as leveled against the CB in SCN.

20.3 The CB has further claimed there is no violation of Regulation 10(m) of the CBLR as in the instant matter, the Noticee as a customs broker has immediately on receipt of information about issue with cargo had specifically informed the Customs Department and the exporters that it will not clear the cargo, in consequence of which the examination of cargo was not conducted by the Customs Department. I find that 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 also 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. Thus, I hold that the CB has contravened the provisions of 10(m) of CBLR, 2018 {erstwhile regulation 11(m) of CBLR, 2013} as leveled against the CB in SCN.

20.4 The CB has further claimed that they have complied with regulation 10(n) of CBLR, 2018. I find that 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 Brokers verified the check list from Shri Manoj Kannar, who himself getting the documents through another person, which apparently is non-existing. Further, I find that the Customs Broker and the forwarder only negotiated their monetary consideration and were careless about fulfilling the requirement of law and their statutory duties. In the light of the aforesaid facts and circumstances of the case, all the aforesaid 05 exporters were working as a common syndicate and the CB as well as the Forwarder has also actively participated in that syndicate. The modus operandi adopted by the exporters was to procure a cargo which was cheap not only in terms of value but also in terms



of quality and overvalue the same to avail higher amount of drawback. In case an alert Customs officer stops them they would make excuses and would bring another set of invoices in order to export the cargo. They used to operate from an address which though exists but is a residential complex and no commercial activities are running over there, so that the authorities could not catch them, if the cargo is put on hold. Finally they would surrender the cargo to the Customs, if they could not find any other way out. Further, I find that in case of Commissioner of Customs Vs K.M.Ganatra & Co. reported at 2016(01)LCX0002 Hon'ble Supreme Court has held that *"the CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies, to ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."* In view of above facts, I hold that the CB is failed to discharge his duties and liable to be penalized under regulation 10(n) of CBLR, 2018 (erstwhile regulation 11(n) of the CBLR, 2013) as leveled against the CB in SCN.

20.5 Further, the CB has claimed that the proceedings under the provisions of the CBLR thereby proposing to revoke customs broker license is illegal and unsustainable. In the present case, I find that that 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 letter 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 goods. The Parent Commissionerate i.e. licensing issuing authority is Customs House Kandla is only empowered to take such action like suspension/revocation of CB license. The matter came to notice to the parent Commissionerate only after receiving of said letter dated 15.03.2019. Hence any action on the Customs Broker is supposed to be taken only after 26.03.2019. Thus, there is no delay made by the licensing authority. Further I find that the Hon'ble High Court of Chennai made in the case of Shri Rajeshwari International Vs Commissioner of Customs, Chennai (2016(11)LCX0027), has made the following observation which is reproduced below:-

*"In terms of Regulation 20(2) of the CHALR, the respondent was empowered to suspend the licences where inquiry against the petitioner is pending or contemplated. The petitioner's licence was suspended invoking the power under Regulation 20(2) of the CHALR, 2004, after which the inquiry was conducted. Referring to Regulation 22 of the CHALR, it is submitted by the respondents that the said Regulation stipulates the procedure for suspending or revoking licence under Regulation 20 and Regulation 22 of the CHALR does not specify any time limit of 90 days for issuance of show cause notice and Regulation 22(1) of the CHALR provided for granting time of not less than 45 days to the Customs House Agent to submit written statement of defence. Thus, the respondent would contend that proceedings against the petitioner commenced, when CHALR was in force, which did not stipulate any time limit for revoking the licence under*

Regulation 22. It is further submitted that when CBLR was notified in exercise of the powers conferred under Section 146(2) of the Customs Act, 1962 and in supersession of the CHALR, an exception was carved out in respect of things done or omitted to be done before such supersession. Therefore, it is submitted that the 2013 CBLR will apply to all cases except in respect of things done under CHALR before supersession of CHALR and in the present case proceedings for suspension or revocation were initiated under Regulation 22 of the CHALR, 2004. Therefore, the impugned proceedings being in continuation of the proceedings initiated under CHALR is valid and not barred by limitation."

21. In view of the above, I hold that the entire allegation leveled against the CB in the Show Cause Notice dated 21.05.2019 for the contravention of provisions of Regulation 10(a), 10(d), 10(m) and 10(n) of CBLR, 2018 (erstwhile regulation 11(a), 11(d), 11(m) & 11(n) of CBLR, 2013.) stand proved. Accordingly, I pass the following order:

**ORDER**

- (i) I revoke the Customs Broker Licence No. CHA/KCH/R/2/ 1994 (PAN No. AACFB1035E) issued to M/s B. N. Thakker and Company, Room No. 207, 2<sup>nd</sup> Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201 under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with Regulation 17 of CBLR, 2018.
- (ii) I also order for forfeit of the whole security deposit furnished by the Customs Broker for issuance of CB Licence No. CHA/KCH/R/2/ 1994 (PAN No. AACFB1035E) under Regulation 14 of CBLR, 2018.
- (iii) I also impose a Penalty of Rs. 50,000/- (Rs Fifty Thousand only) upon M/s B. N. Thakker and Company, Gandhidham in terms of Regulation 18 of CBLR, 2018.

  
(Sanjay Kumar Agarwal)  
Pr. Commissioner,  
Customs House, Kandla

To  
M/s B. N. Thakker and Company,  
Room No. 207, 2<sup>nd</sup> 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. Notice Board
7. Office copy.