



OFFICE OF THE PR. COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

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A	फाइल संख्या/ File No.	S/7-45/CHA/2014
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-05 -2019-20
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPAL COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	11.06.2019
E	जारी करने की दिनांक/Date of issue	11.06.2019
F	कारण बताओ नोटिस, दिनांक/ Show Cause Notice No. & date	F. No. S/7-45/CHA/2014 dated 25.09.2018 & Addendum to SCN dated 11.12.2018
G	नोटीसी पार्टी /Noticee/Party	M/s All Marine Cargo Services, Office No. 111, 112 B, Rishabh Corner, Sector-8, Gandhidham-370201 {Formerly; Flat No. 102, Plot No. 109, Sector-5 Gandhidham}

- यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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

द्वितीय 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 Bhavan Asarwa,

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

- 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.
- 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 be 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.
- अपील ज्ञापन के साथ इयूटि/ 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.
- 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.
- 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 where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute.

Subject:- Action under Regulation 17 of CBLR,2018 (erstwhile regulation 20 of CBLR,2013) against M/s All Marine Cargo Services, Gandhidham.

BRIEF FACTS OF THE CASE:

M/s All Marine Cargo Services, Office No. 111, 112 B, Rishabh Corner, Sector-8, Gandhidham-370201 {formerly; Flat No. 102, Plot No. 109, Sector-5 Gandhidham} (hereinafter also referred to as 'M/s All Marine' or 'the CB') were issued Customs Broker License No. KDL/CB/61/2014 dated 22.09.2014, valid up to 22.09.2024 (Permanent Account Number: BASPR6595Q), by the Commissioner of Customs, Custom House, Kandla under Regulation 7(1) of the Customs Brokers Licensing Regulations, 2013 {now Regulation 7(2) of CBLR, 2018}. M/s All Marine were permitted to work as Customs Broker at Mundra, by the Commissioner of Customs, Custom House Mundra under regulation 7(2) of CBLR, 2013 { now Regulation 7(4) of CBLR, 2018} and the said permission was valid up to 22.09.2024 i.e. till the validity of parent licence.

2. The Assistant Director, DRI, Regional Unit, Gandhidham has forwarded copy of the SCN File No. DRI/AZU-45/2017-Crescent dated 10.09.2018 issued by the Additional Director General, DRI, Ahmedabad for the action against the CB M/s All Marine Cargo Services (co-noticee in the SCN) for the contravention of the regulations of Customs Brokers Licensing Regulations, 2013 {now Regulation of CBLR, 2018} .

2.1 It is brought out that a specific intelligence was gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') that the goods covered under a Bill of Entry bearing no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders (IEC No. 0317524631), 1/10, SaiDham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West-421202, Dist-Thane, Maharashtra (hereinafter referred to as 'the importer') were mis-declared in respect of value and other material particulars. Intelligence also suggested that some of the goods were in violation of Bureau of Indian Standards (BIS) norms and some of the imported goods involved in the said Bill of Entry were counterfeit goods of some well-known brands and infringing Intellectual Property Rights; and that some officers of Specific Intelligence & Investigation Branch (SIIB), Custom House, Mundra had allowed clearance of said consignment in collusion with importer/importer's representative.

2.3 Acting on the said intelligence, officers of DRI detained the said consignment and initiated inquiry in the matter by way of detailed examination of the consignment. During 100 % examination, it was observed that the quantity of Mobile Screen Guard, USB Cable, Mini Speaker, Selfie Stick for mobile, USB Dock Connector, Mobile Phone Cover TPU, Side Bumper for mobile, Charging Connector Socket, Mobile Battery, Touch Screen etc. were found to be less and Earphones was found to be excess in quantity than the quantity declared in the Bill of Entry/Packing List. Also, additional items viz., Headphone, Audio Cable, HDMI to lightning & HDMI to USB, Printed Circuit Board Strips and extra Packing articles were found which were not declared in the Invoice, Packing List and Bill of Entry. The description & quantity of goods declared in the Bill of Entry/Invoice/Packing List, vis-à-vis, the description & quantity of goods found during examination of import consignment by the officers of DRI is tabulated hereunder:-

Sr. No.	Description as per Panchanam a	Description as per Invoice /Packing List	Qty (PCS) As per Panchanam	Qty as per Invoice	Unit of Qty as per Invoice	Qty (Pcs) as per Invoice	Difference Invoice quantity minus actual quantity (Pcs)	Remarks/ quantity found (excess/ less)
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1.	USB Data / Charging Cable	USB Cable	254615	21408.59	dozen	256903.08	2288.08	Less
2.	Power Bank	Charging Connector Socket	4971	434	dozen	5208	237	Less
3.	Earphone	Earphone	19980	1625	dozen	19500	-480	Excess
4.	Car Mobile Charging Adaptor	USB Dock	5400	458.33	dozen	5499.96	99.96	Less
5.	Mobile Phone Cover	TPU Cover	12371	1266.67	dozen	15200.04	2829.04	Less
6.	Mobile Phone Battery	Battery/PCB	34818	2904	dozen	34848	30	Less
7.	Mobile Screen Guard (Tuffened Glass)	Screen Guard (Tuffened Glass)	510244	3556	gross	512064	1820	Less
8.	Touch Screen	Touch Screen	3200	266.67	dozen	3200.04	0.04	Slightly less
9.	Wireless mini Speaker	Mini Speaker	415	36	dozen	432	17	Less
10.	Mobile plastic holder	Plastic holder (for mobile)	60000	5000	dozen	60000	0	OK
11.	Bike Mobile Holder	Side Bumper (for mobile)	993	84	dozen	1008	15	Less
12.	Selfie stick for mobile	Stick (for selfie)	1987	167	dozen	2004	17	Less
13.	Headphone	Not declared in bill of entry	1475				-1475	Excess
14.	Audio Cable		500				-500	Excess
15.	HDMI to lightening & USB		232				-232	Excess
16.	Printed Circuit Board Strips (50 units in one strip)		440 Strips				-440 Strips	Excess
17.	Packing articles		47346				-47346	Excess

2.3.1 During the course of detailed examination of the import consignment, some of the items of the subject consignment appeared to be of brands vizXiommi (Mi), Oppo, Vivo, JBL, Nokia, Samsung, Sonyetc. The representatives of these brands were contacted and requested to give opinion in respect of such branded items. Representative of Samsung and Sony visited CFS premises and inspected items having marks /brands of said companies. They opined that the Samsung and Sony branded goods appeared to be counterfeit.

2.3.2 Whereas, it appeared that some of the goods viz. Mobile Battery and Power Banks imported in said consignment are covered under Schedule of Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 vide S. O. 2905 (E) dated 7th November 2014 and are allowed to be imported by person registered with Bureau of Indian Standards (BIS). Further, CIF value of entire goods declared in Bill of Entry was shown as Rs. 14,87,806/- only while Market Price of some branded goods only as per brands mentioned thereon as checked on e-commerce websites appeared to be around Rs. 4.31 Crores as on the day of inquiry conducted through e-commerce websites and worksheet prepared thereon.

2.3.3 Thus, prima facie on examination of goods, it was found that there were multiple counts of violations of Customs Act such as undervaluation, outright mis-declaration, non-declaration/concealment and an attempt to import prohibited & deemed prohibited goods as also violation of allied Acts, involved in the instant imports. It was also observed that the goods, as mentioned in the packing list were

mis-declared in respect of quantity, brand name or actual feature of goods to avoid the provisions of BIS or other compliances required under law. The details of specification, compatibility etc. were also not declared and the invoice referred to only generic description of goods. The goods also appeared to be highly undervalued. Thus under a reasonable belief that the said consignment was being imported by resorting to multiple violations of Customs Act as also violation of IPR Enforcement Rules, 2007 and Violations of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as amended, the import consignment was placed under seizure vide Seizure Memo dated 29.09.2017 for further investigation.

3. It is brought out that during the course of investigation of the case; statements of various concerned persons along with the CB employees with respect to the subject import of the subject consignment were recorded by DRI Officers. The brief of statements of CB employees are as follows:

3.1 Statement of Shri Chandan Singh, Resident of 62/G, Kalapurna Ashish, Opp.-St. Xavier's School, Baroi Road, Mundra, working in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 29.09.2017 in which he submitted that he being H Card Holder, went to SIIB Section, Mundra and handed over the Bill of Entry file to Shri Sudhanshu Tyagi, Preventive Officer, SIIB, Customs House Mundra; that he was not dealing with the said B/E file but Shri Bhavesh was handling B/E file and Shri Bhavesh sent him the B/E file with Shri Ankit to whom he (Chandan) met first time. He also clarified that on 21.09.2017, he put his signature on the Panchnama as per direction of SIIB officers in back date i.e. 18.09.2017 though he had not even read the said Panchnama drawn by SIIB officers.

3.2 Statement of Shri Bhavesh N. Gori, Resident of Plot No. 12, Room No. 12, Opp-U S Villas, Baroi Road, Mundra, working as H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 03.10.2017 in which he submitted that he is H Card Holder, in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham but he gets salary from Shri Shera Ram Mehra, Prop. Of M/s. Krishna Shipping & Logistics; that he was attending field work assigned to him by Shri Shera Ram and he was dealing with routine work of assessment and clearance of kaoline from officers of Dock Examination; that Shri Chandan called him on 12th or 13th Sept., 2017 that Shri Sudhanshu Tyagi, PO, SIIB called for the B/E file but he asked Shri Ankit to give the B/E file to Shri Chandan. He further stated that on 21.9.2017, he was asked by Shri Shera Ram to reach SIIB, Mundra and sign on behalf of M/s. All Marine Cargo Servies but he had reached home, so Shri Chandan had done so; that he did not know the importer of consignment under B/E No. 3130325 dated 06.09.2017 but he had earlier dealt with another consignment of same nature for which he had cut down the seal of container and Shri Ankit was also present there that time.

3.3 Statement of Shri Amit Kumar Singh, G-Card Holder and Power of Attorney Holder of Customs Broker Firm M/s. All Marine Cargo Services, was recorded under Section 108 of the Customs Act, 1962, before Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 06.10.2017 wherein he inter alia deposed that M/s. All Marine Cargo Services, Gandhidham is a proprietorship firm engaged in customs clearance and forwarding work. Its proprietor

is Shri Subhanker Rastogi and he himself is holder of Power of Attorney of M/s. All Marine Cargo Services, Gandhidham and overall in-charge of M/s. All Marine Cargo Services, Gandhidham; that he got the work of clearance of goods, i.e., mobile accessories imported by M/s Crescent Traders, Dombiwali (W) through Shri Sheraram Mehra, Proprietor of M/s Krishna Shipping and Logistics, Gandhidham. He further stated that he received copies of IEC, Letter of Bank of India confirming AD Code, GST Registration, Central Excise Registration, Reference Checklist, Aadhar Card of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of said importer; that these documents were received by them from Shri Sheraram Mehra vide mail dated 23.08.2017 through his mail ID info@krishnashippinglogistics.com; that they have not verified the genuineness of the importer M/s. Crescent Traders, nor they had tried to contact any person of M/s. Crescent Traders. He further stated that they had fixed a charge of Rs. 5,000/ per container for customs clearance with Shri Sheraram Mehra.

4. It is brought out that the importer M/s. Crescent Traders was a dummy firm as its purported Proprietor (as per IEC) Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photos given by him in relation to job, were mis-used for opening IEC in the name M/s. Crescent Traders, Dombivali (W); instead Shri Nasir Khan was the actual importer/controller of M/s. Crescent Traders, Dombivali (W) [IEC No. 0317524631] and he used fake documents/details in relation to fraudulent import of mobile accessories vide Bill of Entry No. 3130325 dated 06.09.2017 to evade his liability from the Govt. enforcement agencies.

5. **Role & liability of Customs Broker & their employee under Customs Act,1962 and CBLR,2018 {erstwhile CBLR,2013}; as per DRI investigation {Page 47 & 48 of SCN File No. DRI/AZU-45/2017-Crescent dated 10.09.2018}** reproduced below;

5.1 **Role and liability of Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham:-**Shri Amit Kumar Singh was G-Card Holder and overall In-charge of M/s. All Marine Cargo Services, Gandhidham and one Shri Shubhankar Rastogi is Proprietor of this firm. M/s. All Marine Cargo Services, Gandhidham filed Bill of Entry No. 3130325 dated 06.09.2017 in respect of goods imported by M/s. Crescent Traders without verifying the KYC documents and genuineness of the importer. The said Customs Broker had mis-declared/ undervalued the goods in question without applying their own mind and without inquiring further into the matter, in detail. They blindly obeyed and followed the instructions imparted by the middlemen of importer but grossly failed to assess the correct description, value and nature of the goods. As admitted by Shri Amit Kumar Singh they had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra. He also admitted that he did not even have contact number of the importer M/s. Crescent Traders at that time. From the above, it appears that the said Customs House Agent M/s. All Marine Cargo Services for his own vested interests had considered the illegitimate and un-justified request of the importer and accepted the manipulated/fabricated import documents submitted

before the Customs, knowingly and intentionally and thereby facilitated the illegal clearance of import consignment.

The said CHA even failed to ascertain/verify the correct value of the goods and did not even bother to examine and look into the correct prevailing value of the same. The applicability of BIS norms and provisions of IPR Rules was also not looked into by them. Basically it becomes the responsibility of the CHA to find out and ascertain the correct value of the goods in question and to ensure that the same have been correctly represented before the Customs instead of merely obtaining a letter from the importer and submitting the same before Customs for getting the value loaded/enhanced. Further CHA is duty bound to make the true and correct declarations before the Customs authorities, but in this case CHA appears to have knowingly and negligently mis-declared the quantity and value of the subject goods.

In the light of above discussed it is evident that they dealt with the import consignment involving mis-declaration and undervaluation etc. and the said act on his part has.

5.2 Role and liability of Shri Chandan Singh, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham:- Shri Chandan Singh brought the B/E file to SIIB, Customs House, Mundra along with Shri Ankit Travadi who was not authorized to appear in SIIB, Customs House, Mundra. Being H Card holder, he was required to go through the B/E file, to verify the credential of importer, details of imported goods etc. but he did not do so and handed over the B/E file to Shri Sudhanshu Tyagi, Preventive Officer, SIIB. He also represented Customs Broker and in that capacity signed the fictitious Panchnama in back date 18.09.2017 which was actually prepared by officers of SIIB, Mundra on 21.09.2017. Thus, Shri Chandan Singh also facilitated the conspiracy to defraud the exchequer and assisted in clearance of import consignment under B/E no. 3130325 dated 06.09.2017 having mis-declaration, undervaluation etc.

5.3 Role and liability of Shri Bhavesh N. Gori, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham: - He was H Card holder of Customs Broker firm M/s. All Marine Cargo Services but was exclusively looking after the work brought to the said Customs Broker by Shri Shera Ram Mehra of M/s. Krishna Shipping & Logistics. His salary was also borne by Shri Shera Ram Mehra. In the instant case, the work related to filing B/E no. 3130325 dated 06.09.2017 was brought to M/s. All Marine Cargo Services by Shri Shera Ram Mehra. Hence, Shri Bhavesh was required to verify the credentials of importer before filing of Bill of Entry by said Customs Broker firm. Whereas, Shri Bhavesh stated in his statement that the consignment under B/E no. 3130325 dated 06.09.2017 was not being attended by him. Since he was exclusively looking after the work brought to the said Customs Broker by Shri Shera Ram Mehra of M/s. Krishna Shipping & Logistics, Shri Bhavesh must have handled the said consignment as stated by Shri Chandan Singh in his statement that Shri Bhavesh was dealing with consignment under B/E no. 3130325 dated 06.09.2017. Sh. Bhavesh had already attended earlier import consignment of similar nature with Shri Ankit Travadi and thus he was known to Ankit who was not authorized to appear in Customs but he sent his colleague Chandan alongwith B/E file, with Shri Ankit to SIIB, Mundra. Thus, it appears that Shri Bhavesh N. Gori was aware about mis-declaration and other lapses in the import consignment under said B/E but he assisted in clearance of the same from Customs. He has also tried to mis-

lead the investigation and tendered a false and fabricated statement before investigating officers.

5.4 From the above it appeared that, M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002), Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham and employee Shri Bhavesh N Gori, in grossly negligent and callous manner through an unauthorized person, declarations in the Bill of Entry and other related documents which were violations including those of mis-declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also were contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights(Imported Goods) Enforcement Rules, 2007 as applicable, on behalf of the importer. The admission statement of Shri Amit Kumar Singh, In-charge of M/s. All Marine Cargo Services, Gandhidham, recorded on 06.10.2017 and that of Shri Bhavesh N Gori recorded on 03.10.2017 as also back dated signature of Shri Chandan Singh representative of M/s. All Marine Cargo Services on fictitious panchnama to facilitate illegal clearance of import goods rendered the subject goods liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 and M/s. All Marine Cargo Services, Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham, Shri Chandan Singh and Shri Bhavesh N Gori liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] and Section 114AA of the Customs Act,1962. Accordingly, they all were made Co-noticee in the SCN File No. DRI/AZU-45/2017-Crescent dated 10.09.2018 passed by the Additional Director General, DRI, Ahmedabad for the said penal action under Customs Act,1962.

5.5 Further, it appeared that the CB M/s All Marine Cargo Services, Gandhidham filed Bill of Entry No. 3130325 dated 06.09.2017 in respect of goods imported by M/s. Crescent Traders without verifying the KYC documents and genuineness of the importer. The said Customs Broker had mis-declared/undervalued the goods in question without applying their own mind and without inquiring further into the matter, in detail. They blindly obeyed and followed the instructions imparted by the middlemen of importer but grossly failed to assess the correct description, value and nature of the goods. They had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer; that they did not even have contacted the importer at that time. From the above, it appears that the said Customs House Agent M/s. All Marine Cargo Services for his own vested interests had considered the illegitimate and un-justified request of the importer and accepted the manipulated/fabricated import documents submitted before the Customs, knowingly and intentionally and thereby facilitated the illegal clearance of import consignment.

6. From the above it appeared that M/s All Marine failed to obtain authorisation, KYC, other documents from the Importer M/s Crescent Traders and also failed due diligence to ascertain the correctness of any information related to imports and importer. Further, they also failed to advise their client to comply with provisions of the Customs Act,1962. The above act of M/s All Marine resulted in deliberate attempt to import the undervalued, mis-declared & restricted goods by M/s Crescent Traders, with intent to evade their liability from the Govt. enforcement agencies.

6.1 It is brought out in the SCN dated 10.09.2018 that M/s All marine, had knowingly concerned themselves in attempting to import highly undervalued mobile accessories in name of M/s Crescent Traders on the basis of false documents. They knowingly abetted in the attempt of illegal import by way of filing the Bill of Entry in respect of undervalued, misdeclared & restricted goods. It appeared from the investigation conducted by officers of DRI that they were instrumental in the attempt of import of undervalued goods to evade duty and to clear goods without BIS certification fraudulently. They have admitted that they had not verified the antecedents of the importer and had not obtained proper authorization from the importer. Investigations made so far had revealed that they were involved in dubious activities in doubtful manner. They were receiving documents from the middleman (through Shri Sheraram Mehra, Proprietor of M/s Krishna Shipping & Logistic, Gandhidham) instead of importer itself and were filing same with the Mundra Customs. Thereby, they failed to observe the obligations entrusted upon them under various clauses of Regulation 10 of the CBLR,2018 { erstwhile regulation 11 of the CBLR,2013}.

6.2 From the above, it appears that; **(Articles of Charges)**

- (i) the Custom Broker M/s All Marine Cargo Services suppressed the material facts from the Customs authorities. They failed to comply with the Regulation 10(a) of CBLR,2018 { erstwhile 11(a) of CBLR, 2013} in as much as they failed to obtain proper authorization from M/s Crescent Traders, Thane, Mumbai by whom they were employed as Customs Broker for clearance of import of subject goods and therefore, they failed to produce authorization before the Deputy/Assistant Commissioner of Customs.
- (ii) the CB has failed to comply with the Regulation 10(d) of CBLR,2018 {erstwhile 11(d) of CBLR, 2013} in as much as they did not advise their client (M/s. Crescent Traders) to comply with the provisions of the Customs Act,1962 and also failed to bring the matter to the notice of the Deputy/Assistant Commissioner of Customs at Mundra regarding detection of mis-declared or un-declared & undervalued goods.
- (iii) the CB also failed to ascertain correct description, quantity of goods before presenting the cargo for examination to the Customs authorities and huge quantity of mis-declared/undeclared goods were detected by DRI and value of cargo was found to be mis-declared and highly undervalued. Thus, it appears that the CB did not exercise due diligence to ascertain correctness of the information from their client and thereby failed to fulfil the obligations mentioned under Regulation 10(e) of CBLR,2018 {erstwhile 11(e) of CBLR, 2013}.
- (iv) the CB have failed to fulfill the obligation given under 10(f) of CBLR,2018 {erstwhile 11(f) of CBLR, 2013} in as much as they failed to inform their clients the orders, instructions or public notice relating to clearance of cargo issued by the Competent Authority.
- (v) As admitted by Shri Amit Kumar Singh they had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra; they did not even have contacted the importer at any time. Therefore, they

failed to comply with the Regulation 10(n) of CBLR,2018 (erstwhile 11(n) of CBLR, 2013) in as much as they did not verify antecedent, correctness of Import Export Code (IEC), identity of their client and functioning of their client at the declared address by using reliable, independent, authentic documents, data or information.

6.3 As per Regulation 13(12) of Customs Brokers Licensing Regulations,2018 (Corresponding to Regulation 17(9) of erstwhile CBLR,2013), 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.

6.4 M/s All Marine Cargo Services have failed to supervise the activities of their employee Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham, Shri Chandan Singh and Shri Bhavesh N Gori, who facilitate illegal clearance of import goods, who are the Co-noticee in the SCN File No. DRI/AZU-45/2017-Crescent dated 10.09.2018 for the penal action under Customs Act, 1962. Thus, the CB have violated the provision of Regulation 13(12) of CBLR,2018 (erstwhile Regulation 17(9) of CBLR,2013).

7. As per Regulation 14 of Customs Brokers Licensing Regulations,2018 (Corresponding to Regulation 18 of erstwhile CBLR,2013), *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.

7.1 As per Regulation 18 of CBLR,2018 (erstwhile Regulation 18/22 of CBLR,2013), *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.*

8. It appeared that the CB has contravened/failed to comply with above discussed provisions of Customs Brokers Licensing Regulations, 2018 (erstwhile CBLR,2013). Accordingly, Show Cause Notice F.No. S/7-45/CHA/2014 dated 25.09.2018 has been issued to the CB M/s All Marine Cargo Services, Office No. 111, 112 B, Rishabh Corner, Sector-8, Gandhidham-370201 (formerly; Flat No. 102, Plot No. 109, Sector-5 Gandhidham) under provisions of Regulation 17 of CBLR,2018 (erstwhile regulation 20 of CBLR,2013) by the Commissioner of Customs, Custom House, Kandla as to why;

(i) The Customs Broker Licence No. KDL/CB/61/2014 (PAN No. BASPR6595Q) issued to them should not be revoked under Regulation 14 of Customs Brokers Licensing Regulations, 2018 (erstwhile Regulation 18 of CBLR,2013).

- (ii) The security furnished by the Customs Broker for issuance of Broker Licence No. KDL/CB/61/2014 (PAN No. BASPR6595Q), should not be forfeited under Regulation 14 of CBLR, 2018 (erstwhile Regulation 18 of CBLR,2013).
- (iii) Penalty should not be imposed on them in terms of Regulation 18 of CBLR,2018 (erstwhile Regulation 18/22 of CBLR,2013).

9. It is brought out that in terms of Regulation 17 of Customs Brokers Licensing Regulations, 2018 (erstwhile regulation 20 of CBLR,2013), Shri Kiran M. Mohadikar, Deputy Commissioner of Customs, Custom House Kandla is appointed as the inquiry Officer in this case vide addendum to SCN dated 11.12.2018. The Inquiry Officer has submitted his inquiry report to the Principal Commissioner of Customs, Customs House Kandla vide letter F. No. S/7-45/CHA/2014 dated 29.04.2019.

Personal Hearing and Defense submission before the Inquiry Officer:

9.1 Shri Amit Kumar Singh, Authorised Signatory vide letter dated 30.12.2018 requested for permission for cross-examination of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders), and Shri Nasir Khan. On 28.01.2019, the CB was given Opportunity for personal hearing on 12.02.2019, 18.02.2019 and 22.02.2019 along with a request to submit a written Defense Reply and request to substantiate their claim for cross-examination.

9.2 The CB remained present for the Personal Hearing on 22.02.2019 at 2:00 PM through Authorized Representative Shri Vikas Mehta. The CB further submitted an Interim Written Defense Reply dated 21.02.2019 during the course of hearing.

9.3 The arguments were put forth for cross-examination of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders), Shri Shera Ram Mehra, Prop. Of M/s. Krishna Shipping & Logistics; and Shri Bhavesh N. Gori, working as H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham. While no argument was put forth for cross-examination of Shri Nasir Khan.

9.4 Their request of cross-examination was duly considered and vide a letter dated 01.03.2019, the denial of their request of cross examination was communicated along with a request of submission of Final Defense Reply. The CB submitted their Final Defense Reply dated 26.03.2019.

Final Defense Reply of the Customs Brokers before the Inquiry Officer:

9.5 The CB argued that as per order of CEGAT, WEST REGIONAL BENCH, BOMBAY - In the case of THAKKAR SHIPPING AGENCY Versus COLLECTOR OF CUSTOMS, BOMBAY, Statements recorded under Section 108 of Customs Act, 1962 not to be used as evidence under Customs House Agents Licensing Regulations,1984.

9.5.1 Secondly, the CB requested for stating the reasons for denial of request of cross-examination of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders). Their argument in favor of the request was that Shri Sandesh G. Tanwar had filed a FIR of misuse of his documents namely, AADHAR card, PAN card and two passport size photos collected under the pretext of giving a job opportunity, without specifically

naming Shri Suraj Singh who had collected the documents. The CB also requested to provide the copy of FIR.

9.5.2 The CB submitted a point wise clarification against the charges levied in the impugned SCN in their defense Reply.

Discussion & Findings of the Inquiry Officer:

10. The Inquiry Officer has gone through the case records, submission made by CB and record of personal hearing and submitted his inquiry report dated 29.04.2019. The reasons for denying the opportunity for cross-examination to the CB and the role of CB and his failure to comply with the provisions of CBLR,2018 (erstwhile CBLR,2013) enumerated above is discussed by the Inquiry Officer as reproduced below:

10.1 At the outset, Inquiry Officer recorded the reasons for denying the opportunity for cross-examination to the CB as under:

The SCN issued from File No. DRI/AZU-45/2017-Crescent dated 10.09.2018 along with all relied upon Documents (RUDs) were served upon the CB. Further, the CB was requested to substantiate the reasons for their request of cross-examination in terms of any new facts/ evidences which were not on record or previously considered.

Shri Sandesh G. Tanwar

In the case of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), he was not sure as to whether Shri Suraj Singh had misused the documents provided or any of his successor thus he did not name Shri Suraj Singh in the FIR. The documents were taken under the pretext of offering a job opportunity to Shri Sandesh G. Tanwar and he belonged to a poor family and studying in Second Year (B.Com). Further the documents such as IEC and signatures on the General Power of Attorney as produced by Shri Md Hanif Shaikh, the salesman of M/s. Connect Mobile, to DRI, bring forth the fact that Shri Nasir Khan is the real master mind behind the Import. Shri Nasir Khan accepts to the fact that he was in search of an IEC code and he was asked by Sandesh Tanwar Rs 5000/- for every consignment and Shri Nasir Khan intended to keep Shri Sandesh Tanwar on job as well. Thus, it is appears that Sandesh Tanwar allowed his documents to be used in lieu of monetary gain.

The CB had requested to see the physical copy of FIR filed by father of Shri Sandesh Tanwar. Since The FIR is not part of the RUDs and also not on record with me, thus the department is not responsible for providing a document which is not present with it and which is also inconsequential for the investigation. Further no outcome of the complaints filed by the father of Shri Sandesh Tanwar has been submitted to DRI till that date of issue of SCN. It appeared to be a delaying tactic on part of The CB, thus their request was considered and denied in due course.

Shri Bhavesh N. Gori

In light of statement of Shri Bhavesh N. Gori, working as H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham, that he was paid salary by Shri Shera Ram Mehra, Prop. of M/s. Krishna Shipping & Logistics, the CB requested

to cross examine Shri Bhavesh N. Gori, merely because the statement of Shri Shera Ram Mehra was silent in this regard. This did not appear to be a reason of consequence to the inquiry thus the request was duly denied due to lack of any substantiation from the CB and Authorized Representative. Shri Bhavesh N. Gori being employee of M/s. All Marine Cargo Services, Gandhidham, it was requested to them that they produce any employment contract, payment voucher, bank statement of the firm or bank statement of Shri Bhavesh N. Gori etc. to bring on record if he was indeed their employee or not.

Shri Shera Ram Mehra

It was requested to provide all the communication if any made via messages or emails for substantiating that Shri Shera Ram Mehra indeed acted as a link between The CB and the importer, and informed about all the legal provisions to the importer on behalf of The CB. But the CB failed to provide any such evidence.

Further a duly notarized statement of Shri Shera Ram Mehra, has been produced by the CB along with Final Defense Reply dated 26.03.2019, which obviates the need of giving opportunity of cross examination in the first place, it also covers the point regarding the salary payment to Shri Bhavesh N. Gori, where Shri Shera Ram Mehra denies of paying any salary to Shri Bhavesh N. Gori.

10.2 Coming to the argument of the CB that as per order of CEGAT, WEST REGIONAL BENCH, BOMBAY - In the case of THAKKAR SHIPPING AGENCY Versus COLLECTOR OF CUSTOMS, BOMBAY, 1994 (69) E.L.T. 90 (Tribunal) ; Statements recorded under Section 108 of Customs Act, 1962 not to be used as evidence under Customs House Agents Licensing Regulations, 1984.

This argument clearly appears to be an afterthought as none of the statements made so far have been retracted by the persons involved. No person has retracted any statement made so far on the grounds of statement being recorded under duress. As per the order of the honorable THE SUPREME COURT OF INDIA in the case of NARESH J. SUKHAWANI Versus UNION OF INDIA, 1996 (83) E.L.T. 258 (S.C.), It was held that the statement is a material piece of evidence and it can be used as substantive evidence.

The relevant para of the order is reproduced below for convenience.

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

Thus the claim of the CB that the as evidence is not gathered under the Regulation 17(3) of the CBLR, 2018, no adverse inference can be drawn from the statements

which are forming a part of SCN issued from File No. DRI/AZU-45/2017-Crescent dated 10.09.2018 fails to appreciate the fact that a Customs official draws these Quasi-judicial powers to summon, gather evidence, documents and record statement from Section 108 of Customs Act, 1962. Also The CBLR,2018 are formed under the Sub-section (2) of Section 146 of Customs act, 1962. Regulation 17(3) of the CBLR, 2018, merely states the principles of Natural Justice should be followed to the fullest. Since statements relied are not retracted, it appears to be an argument for the sake of argument and a hyper technical at that. Not relying on un-retracted statements and calling all the persons involved for statement again is like re-inventing the wheel. The argument falls flat on the ground that all Principles of Natural Justice have been followed in the Inquiry as well as recording of the statements.

Further in the case of ASSTT. COLLR. OF C. EX., RAJAMUNDRY Versus DUNCAN AGRO INDUSTRIES LTD. 2000 (120) E.L.T. 280 (S.C.), THE SUPREME COURT OF INDIA held that

Statement recorded by Customs Officers under Section 108 of the Customs Act, 1962 admissible in evidence - Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act.

The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody.

The court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a gazetted officer must also pass the tests prescribed in Section 24 of the Evidence Act. If such a statement is impaired by any of the vitiating premises enumerated in Section 24 that statement becomes useless in any criminal proceedings.

When the statements are not retracted, they cross the bar imposed by Section 24 of the Evidence Act, and can be considered as substantive evidence.

Instruction issued by CBEC, vide F. No. 201/01/2014-CX.6, dated 26-6-2014, enunciates the principles of Judicial discipline, thus when Apex courts have accepted Statements recorded Section 108 of the Customs Act, 1962, it is binding upon all adjudicating authorities and they are to be followed scrupulously.

11. The Inquiry Officer has held that the charges framed out in SCN dated 25.09.2018 are proved on the following ground:

11.1 Article of Charge (i): The Custom Broker M/s All Marine Cargo Services suppressed the material facts from the Customs authorities. They failed to comply with the Regulation 10(a) of CBLR,2018 { erstwhile 11(a) of CBLR, 2013} in as much as they failed to obtain proper authorization from M/s Crescent Traders, Thane, Mumbai by whom they were employed as Customs Broker for clearance of import of subject goods and therefore, they failed to produce authorization before the Deputy/Assistant Commissioner of Customs.

Finding:- From above discussion, it appears that M/s All Marine failed to obtain authorization, KYC, other documents from the Importer M/s Crescent Traders and

also failed due diligence to ascertain the correctness of any information related to imports and importer.

The CB received copies of IEC, Letter of Bank of India confirming AD Code, GST Registration, Central Excise Registration, Reference Checklist, Aadhar Card of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of said importer; that these documents were received by them from Shri Sheraram Mehra vide mail dated 23.08.2017 through his mail ID info@krishnashippinglogistics.com; that they have not verified the genuineness of the importer M/s. Crescent Traders, nor they had tried to contact any person of M/s. Crescent Traders.

11.2 Article of Charge (ii): The CB has failed to comply with the Regulation 10(d) of CBLR,2018 {erstwhile 11(d) of CBLR, 2013} in as much as they did not advise their client (M/s. Crescent Traders) to comply with the provisions of the Customs Act,1962 and also failed to bring the matter to the notice of the Deputy/Assistant Commissioner of Customs at Mundra regarding detection of mis-declared or un-declared & undervalued goods.

Finding:-The CB received copies of IEC, Letter of Bank of India confirming AD Code, GST Registration, Central Excise Registration, Reference Checklist, Aadhar Card of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of said importer; that these documents were received by them from Shri Sheraram Mehra vide mail dated 23.08.2017 through his mail ID info@krishnashippinglogistics.com; that they have not verified the genuineness of the importer M/s. Crescent Traders, nor they had tried to contact any person of M/s. Crescent Traders.

It is brought out that the importer M/s. Crescent Traders was a dummy firm as its purported Proprietor (as per IEC) Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photos given by him in relation to job, were mis-used for opening IEC in the name M/s. Crescent Traders, Dombivali (W); instead Shri Nasir Khan was the actual importer/controller of M/s. Crescent Traders, Dombivali (W) [IEC No. 0317524631] and he used fake documents/details in relation to fraudulent import of mobile accessories vide Bill of Entry No. 3130325 dated 06.09.2017 to evade his liability from the Govt. enforcement agencies.

11.3 Article of Charge (iii):The CB also failed to ascertain correct description, quantity of goods before presenting the cargo for examination to the Customs authorities and huge quantity of mis-declared/undeclared goods were detected by DRI and value of cargo was found to be mis-declared and highly undervalued. Thus, it appears that the CB did not exercise due diligence to ascertain correctness of the information from their client and thereby failed to fulfil the obligations mentioned under Regulation 10(e) of CBLR,2018 {erstwhile 11(e) of CBLR, 2013}.

Finding:- The said Customs Broker had mis-declared/ undervalued the goods in question without applying their own mind and without inquiring further into the matter, in detail. They blindly obeyed and followed the instructions imparted by the middlemen of importer but grossly failed to assess the correct description, value and

nature of the goods. The CB did not even have contact number of the importer M/s. Crescent Traders at that time.

The said CHA even failed to ascertain/verify the correct value of the goods and did not even bother to examine and look into the correct prevailing value of the same. The applicability of BIS norms and provisions of IPR Rules was also not looked into by them. Basically it becomes the responsibility of the CHA to find out and ascertain the correct value of the goods in question and to ensure that the same have been correctly represented before the Customs instead of merely obtaining a letter from the importer and submitting the same before Customs for getting the value loaded/enhanced. Further CHA is duty bound to make the true and correct declarations before the Customs authorities, but in this case CHA appears to have knowingly and negligently mis-declared the quantity and value of the subject goods.

11.4 Article of Charge (iv):The CB have failed to fulfill the obligation given under 10(f) of CBLR,2018 {erstwhile 11(f) of CBLR, 2013} in as much as they failed to inform their clients the orders, instructions or public notice relating to clearance of cargo issued by the Competent Authority.

Finding:- The applicability of BIS norms and provisions of IPR Rules was also not looked into by them, correct representation in documents and declarations before the Customs officials was not correct.

11.5 Article of Charge (v):As admitted by Shri Amit Kumar Singh they had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra; they did not even have contacted the importer at any time. Therefore, they failed to comply with the Regulation 10(n) of CBLR,2018 {erstwhile 11(n) of CBLR, 2013} in as much as they did not verify antecedent, correctness of Import Export Code (IEC), identity of their client and functioning of their client at the declared address by using reliable, independent, authentic documents, data or information.

Finding:-From above discussion it appears that the CB, M/s. All Marine Cargo Services for his own vested interests had considered the illegitimate and un-justified request of the importer and accepted the manipulated/fabricated import documents submitted before the Customs, knowingly and intentionally and thereby facilitated the illegal clearance of import consignment.

The CB in defense reply states that they found out about the mis-declaration, undervaluation and violation of norms of BIS and IPR came to their knowledge only opening of the packages by Customs officers and not any time prior is not tenable and shows laxity on their part and were driven by own vested interests by considering the illegitimate and un-justified requests of the importer. They failed to uphold the duties and obligations of the CB as per CBLR, 2018 since they were never in touch with the Importer through Phone or Email, thus the CB has nothing in his defense to prove otherwise.

Conclusion of Inquiry Officer:

12. After careful consideration of the facts and circumstances of the case and to the Personal Hearing and Defense Reply filed by the CB, without prejudice to anyone involved or connected with the inquiry, Shri Kiran M. Mohadikar (Inquiry Officer) conclude that the Article of Charges I to V against the CB, M/s. All Marine Cargo Services are proved.

13. The above said Inquiry Report was given to the CB - M/s All Marine Cargo Services vide letter F.No. S/7-45/CHA/2014 dated 09.05.2019 and they were requested to submit their defence/representation, if any, against the Inquiry Report within stipulated time period.

Personal Hearing & Defense submission/representation

14. As per CBLR provisions, a copy of Inquiry Report dated 29.04.2019 was sent to CB vide letter dated 09.05.2019 to seek their representation, if any, on the same with in stipulated time period as prescribed under regulation 17(6) of CBLR,2018. Subsequently, CB vide letter dated 31.05.2019 & email dated 06.06.2019 requested to submit representation, if any, against the Inquiry Report on or before 08.06.2019. However, CB did not file any representation in this regard. Further, opportunity of Personal Hearing was accorded to CB or their representative for their appearance on 11.06.2019. CB or their authorized representative did not turn up on the scheduled date & time. CB vide letter dated 11.06.2019 seeking more time to submit their representation against the Inquiry Report.

Discussion and Findings:

15. I have carefully gone through the available case records, SCN & addendum to SCN dated 25.09.2018 & 11.12.2018 respectively, Inquiry Report submitted by the Inquiry Officer. I find that CB or their authorized representative neither appeared on the scheduled date & time of Personal Hearing on 11.06.2019 nor submitted their submission/representation on the Inquiry Report inspite of postal communication at their declared address in CB License as well as electronic communication at the e-mail ID, mentioned at the letter Head of Customs Broker firm. I find that in terms of regulation 17(7) of Custom Brokers Licensing Regulation, 2018 an opportunity of personal hearing on 11.06.2019 is already given to the Customs Broker. The CB vide his letter dated 11.06.2019 has requested to adjourned the hearing for one week. Such a request cannot be acceded as the next date of hearing would fall beyond the stipulated period under Regulation 17 of CBLR, 2018 and would vitiate the proceedings.

15.1 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(e), 10(f), 10(n) & 13(12) of CBLR,2018 { *erstwhile Regulation 11(a), 11(d), 11(e), 11(f), 11(n) & 17(9) of CBLR,2013* } by the Customs Broker, which render them liable for action 14 of CBLR,2018 read with regulation 17 & 18 *ibid* { *erstwhile regulation 18 of CBLR,2013 read with regulation 20 & 22 ibid* }, including revocation of license , forfeiture of part or whole of security & imposition of penalty.

15.2 I find that the goods covered under Bill of Entry bearing no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders, through the CB - M/s All Marine Cargo Services, were undervalued, mis-declared, undeclared/Concealed and prohibited in nature. Some of the goods were in violation of Bureau of Indian Standards (BIS) norms

and some of the imported goods involved in the said Bill of Entry were counterfeit goods of some well-known brands and infringing Intellectual Property Rights. 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 import consignment.

15.3 I find that during the investigation of the case; statements of various concerned persons along with the CB employees with respect to the subject import of the subject consignment were recorded by DRI Officers under Section 108 of the Customs Act, 1962, 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. 2000 (120) E.L.T. 280 (S.C.).

16. The Show Cause Notice dated 25.09.2018 was issued to the CB for alleged contravention of provisions of Regulation 10(a), 10(d), 10(e), 10(f), 10(n) & 13(12) of CBLR, 2018 {erstwhile Regulation 11(a), 11(d), 11(e), 11(f), 11(n) & 17(9) of CBLR, 2013}. Accordingly, I proceed to discuss all the issues raised in Show Cause Notice with relevant provisions of CBLR, 2018 (erstwhile CBLR, 2013) and findings of Inquiry Officer. As the CB or their authorized representative neither appeared on the scheduled date and time of personal hearing nor submitted any submission/representation on the Inquiry Report, I am inclined to decide the case ex-parte.

16.1 The first allegation leveled against the CB is for violation of Regulation 10(a) of CBLR, 2018 {erstwhile 11(a) of CBLR, 2013}, which states that:

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

In the instant case, I find that CB- M/s All Marine Cargo Services had no contacts with the actual importer and that he received documents (Copies of IEC, letter of Bank of India confirming AD Code, GST Registration, Central Excise Registration, Reference Checklist, Aadhar Card of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of said importer) from some unauthorized person Shri Sheraram Mehra vide mail dated 23.08.2017 through his mail ID info@krishnashippinglogistics.com and that they have not verified the genuineness of the importer M/s. Crescent Traders, nor they had tried to contact any person of M/s. Crescent Traders. I find that CB M/s All Marine Cargo Services, Gandhidham filed Bill of Entry No. 3130325 dated 06.09.2017 in respect of goods imported by M/s. Crescent Traders without verifying the KYC documents and genuineness of the importer. It appeared that CB has contravened the Provisions of Regulation 10(a) of CBLR, 2018 {erstwhile regulation 11(a) of CBLR, 2013}. Inquiry Officer has confirmed the contravention of said regulation by the CB. As there is no submission made by the CB to counter the allegation leveled in the Show Cause Notice as well as on the findings of Inquiry Report, I hold that the CB failed to comply with the provisions of Regulation 10(a) of CBLR, 2018 {erstwhile Regulation 11(a) of CBLR, 2013}.

16.2 Second allegation leveled against the CB is for violation of Regulation 10(d) of CBLR,2018 (erstwhile Regulation 11(d) of CBLR,2013), which states that:

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

In the instant case, it has been alleged that goods imported under Bill of Entry No. 3130325 dated 06.09.2017 (filed by M/s Crescent Traders through the CB) were mis-declared/undervalued and contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable, on behalf of the importer. I find that the CB had mis-declared /undervalued the goods in question without applying their own mind and without inquiring further into the matter, in detail. The above act of M/s All Marine resulted in deliberate attempt to import the undervalued, mis-declared & restricted goods by M/s Crescent Traders (dummy firm), with intent to evade their liability from the Govt. enforcement agencies. I find that the CB for his own vested interests had considered the illegitimate and un-justified request of the importer and accepted the manipulated/fabricated import documents submitted before the Customs, knowingly and intentionally and thereby facilitated the illegal clearance of import consignment. Thus, instead of bringing matter to the notice of department the CB involved themselves in the illegal clearance of import consignment. It appeared that CB has contravened the Provisions of Regulation 10(d) of CBLR,2018 {erstwhile regulation 11(d) of CBLR,2013}. Inquiry Officer has confirmed the contravention of said regulation by the CB. As there is no submission made by the CB to counter the allegation leveled in the Show Cause Notice as well as on the findings of Inquiry Report, I hold that the CB failed to comply with the provisions of Regulation 10(d) of CBLR,2018 {erstwhile Regulation 11(d) of CBLR,2013}.

16.3 Third allegation leveled against the CB is for violation of Regulation 10(e) of CBLR,2018 (erstwhile Regulation 11(e) of CBLR,2013), which states that:

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

In the instant case, allegation is that CB had no contact with the actual importer and that he received the documents from some unauthorized person namely Shri Sheraram Mehra. Moreover goods were imported in the name of dummy firm/IEC. The CB blindly obeyed and followed the instructions imparted by the middlemen of importer but grossly failed to assess the correct description, value and nature of the goods and the applicability of BIS norms and provisions of IPR Rules was also not looked into by them. It is the responsibility of the CHA to find out and ascertain the correct value of the goods in question and to ensure that the same have been correctly represented before the Customs instead of merely obtaining a letter from the importer and submitting the same before Customs for getting the value loaded/enhanced. Further CHA is duty bound to make the true and correct declarations before the Customs authorities, but in this case CHA appears to have knowingly and negligently mis-declared the quantity and value of the subject goods. Thus, CB M/s All Marine Cargo Services derelicted their duty and did not exercise control and restrain while

performing their task as CB. It appeared that CB has contravened the Provisions of Regulation 10(e) of CBLR,2018{erstwhile regulation 11(e) of CBLR,2013}. Inquiry Officer has confirmed the contravention of said regulation by the CB. As there is no submission made by the CB to counter the allegation leveled in the Show Cause Notice as well as on the findings of Inquiry Report, I hold that the CB failed to comply with the provisions of Regulation 10(e) of CBLR,2018 {erstwhile Regulation 11(e) of CBLR,2013}.

16.4 Fourth allegation leveled against the CB is for violation of Regulation 10(f) of CBLR,2018 (erstwhile Regulation 11(f) of CBLR,2013), which states that:

A Customs Brokers shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;

In the instant case, the applicability of BIS norms and provisions of IPR Rules was also not looked into by them (CB & Importer). Representation in documents and declarations before the Customs officials was not correct. Moreover, CB along with Importer was instrumental in the attempt of import of undervalued goods to evade duty and to clear goods without BIS certification fraudulently. It appeared that CB has contravened the Provisions of Regulation 10(f) of CBLR,2018{erstwhile regulation 11(f) of CBLR,2013}. Inquiry Officer has confirmed the contravention of said regulation by the CB. As there is no submission made by the CB to counter the allegation leveled in the Show Cause Notice as well as on the findings of Inquiry Report, I hold that the CB failed to comply with the provisions of Regulation 10(f) of CBLR,2018 {erstwhile Regulation 11(f) of CBLR,2013}.

16.5 Fifth allegation leveled against the CB is for violation of Regulation 10(n) of CBLR,2018 (erstwhile Regulation 11(n) of CBLR,2013), which states that:

A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

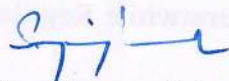
In the instant case, allegation is that the KYC was not physically verified to know the genuineness of the Importer by the CB, as in the instant case it came to notice that IEC number, which was required for conduct of Import Business is of dummy firm. Shri Amit Kumar Singh, G-Card Holder & Over-all-Incharge of CB admitted in his statement that they had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra; they did not even have contacted the importer at any time.It appeared that the CB has contravened the provisions of Regulation 10(n) of CBLR,2018 {erstwhile regulation 11(n) of CBLR, 2013}. Inquiry Officer has confirmed the contravention of said regulation by the CB. As there is no submission made by the CB to counter the allegation leveled in the Show Cause Notice as well as on the findings of Inquiry Report, I hold that the CB failed to comply with the provisions of Regulation 10(n) of CBLR,2018 {erstwhile Regulation 11(n) of CBLR,2013}.

16.6 In the instant case CB- M/s All Marine Cargo Services neglected his duty and did not exercise control over his employees and restrain while performing its task as CB. Thus, I find that the CB failed to comply with the provisions of Regulations 13(12) of CBLR,2018 (erstwhile Regulation 17(9) of CBLR,2013).

17. In view of the above, I find that the entire allegation leveled against the CB in the Show Cause Notice dated 25.09.2018 for the contravention of provisions of Regulation 10(a), 10(d), 10(e), 10(f), 10(n) & 13(12) of CBLR, 2018 {erstwhile Regulation 11(a), 11(d), 11(e), 11(f), 11(n) & 17(9) of CBLR, 2013} stand proved. Accordingly, I pass the following order:

ORDER

- (i) I revoke the Customs Broker Licence No. KDL/CB/61/2014 (PAN No. BASPR6595Q) issued to M/s All Marine Cargo Services, Gandhidham under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with Regulation 17 of CBLR,2018 {erstwhile Regulation 18 of CBLR,2013 read with regulation 20 of CBLR,2013}.
- (ii) I also order for forfeiture of the whole security deposit furnished by the Customs Broker for issuance of CB Licence No. KDL/CB/61/2014 (PAN No. BASPR6595Q) under Regulation 14 of CBLR, 2018 {erstwhile Regulation 18 of CBLR, 2013}.
- (iii) I also impose a Penalty of Rs. 50,000/- (Fifty Thousand Only) upon M/s All Marine Cargo Services, Gandhidham in terms of Regulation 18 of CBLR,2018 (erstwhile Regulation 18/22 of CBLR,2013).


(Sanjay Kumar Agarwal)
Pr. Commissioner

To,
M/s All Marine Cargo Services,
Office No. 111, 112 B, Rishabh Corner,
Sector-8, Gandhidham-370201
{Formerly; Flat No. 102,
Plot No. 109, Sector-5 Gandhidham}

Copy to:-

1. The Chief Commissioner of Customs, Customs Gujarat Zone, Ahmedabad
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Assistant Director, DRI, Regional Unit, Gandhidham
4. The Deputy Commissioner of Customs, EDI Section, Custom House, Kandla with a request to block/revoke the CB License in system.
5. All Section Heads, Custom House, Kandla
6. Office copy.
7. Notice Board.