

 <p>OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836- 271467</p>		
A	फाइल संख्या/ File No.	CUS/LIC/MISC/311/2023-CB-O/o Commr-Cus-Kandla
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-15-2023-24
C	पारितकर्ता/Passed by	M. Rammohan Rao COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	16.03.2024
E	जारी करने की दिनांक/Date of issue	16.03.2024
E	नोटीसी/ पार्टी Noticee/Party	M/s Krishna Shipping and Allied Services, Office No. 53/54-A, Transport Nagar, NH-8, Gandhidham- 370201, Kutch, Gujarat
F	DIN NUMBER	20240371ML0000555D9E

1. 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 129 A (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:  
**Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,**  
2nd Floor, Bahumali Bhavan Asarwa,  
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad – 380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee

Stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

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

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. 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.

**Sub: Action under Regulation 14 of CBLR, 2018 read with Regulation 17 of CBLR, 2018 against M/s Krishna Shipping and Allied Services, Office No. 53/54-A, Transport Nagar, NH-8, Gandhidham-370201, Kutch, Gujarat Gandhidham-370201.**

---

### **BRIEF FACTS OF THE CASE:**

M/s Krishna Shipping and Allied Services having registered office at Office No. 53/54-A, Transport Nagar, NH-8, Gandhidham-370201, Kutch, Gujarat (hereinafter referred to as the Custom Broker or CB) were issued Customs Broker License No.KDL/CHA/R/45/2011 (PAN No. AADFK8760C) dated 20.12.2011, valid upto 19.12.2031, by the Commissioner of Customs, Kandla under Regulation 9 (1) of Customs House Agents Licensing Regulations, 2004. The CB was also permitted to work as Custom Broker, for the purpose of presenting of import and export documents on behalf of their clients at Kandla, Mundra and Hazira, by the Jurisdictional Commissioner of Customs under erstwhile Regulation 9 (2) of Customs House Agents Licensing Regulations, 2004 & Regulation 7(2) of CBLR, 2013 (now Regulations 7(4) of CBLR, 2018) and the said permission was valid up to 19.12.2031 i.e. till the validity of parent license.

2. An offence report was received from the Directorate of Revenue Intelligence, Ludhiana Zonal Unit, Ludhiana vide F. No. DRI/LDZUI856/INT-NIL/ENQ-1s/2023 dated 07.07.2023 outlining the role of the Custom Broker and for taking necessary action against the CB under Customs Brokers Licensing Regulation, 2018.

2.1. Whereas M/s Aditya Exports, a partnership firm of Shri Mehul Navinchandra Pujara and Shri Naimish Himatlal Sodha, which was de-facto controlled and operated by Shri Pankaj Karsanbhai Thakker, in capacity of a warehousing unit at Shed No. 85 - 88, Sector-I, KASEZ, Gandhidham (IEC/PAN: 37980002121/AAFFA0429C) under LOA dated 09.11.2020, imported 1792 MT of Black Pepper (CTH 0904) into KASEZ, allegedly from Afghanistan between October, 2022 and March, 2023. The black pepper shipments were

1/1834082/2024

claimed to have been passed through Kabul Customs, transported there from by land to Bandar Abbas port, Iran, stuffed into containers at the port and sailed in vessels/ships for destination Mundra via Jebel Ali, Dubai.

2.2. An inquiry was initiated by the DRI Ludhiana against Sh. Pankaj K. Thakker, F Card holder in CB firm M/s Krishna Shipping and Allied Services who was engaged in import of 1792 MT of Black Pepper (CTH 0904) into KASEZ, allegedly from Afghanistan between October,2022 and March, 2023 in which Customs duty of Rs.66.10 Crore was evaded in collusion with M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP on 1596 MT of 'black pepper' removed into DTA at NIL rate of customs duty by claiming it to be of Afghanistan origin. DTA clearance to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was made through M/s Aditya Exports which is controlled and operated by Shri Pankaj Thakker only.

2.3. During the course of investigation, Shri Sudhakar Chikati, Kandla Branch manager of M/s Aiyer Shipping Agency Pvt. Ltd. and Shri Ankit Sharma, Business Development Manager in Kandla for M/s Vision Container Line Pvt. Ltd and M/s Evershine Container Line Pvt. Ltd, who are shipping agents for M/s Aditya Exports, in their statement and declaration dated 26.04.2023 and 28.04.2023 respectively, stated categorically that all the Bills of Lading of cargo from Bandar Abbas in which their names appear as 'shipping agents' for delivery of goods in India, were fake and that Black Pepper had actually sailed for India from Jebel Ali only; Shri Sudhakar Chikati, Kandla Branch Manager of M/s Aiyer Shipping Agency Pvt. Ltd in his statement dated 25.04.2023 tendered under Section 108 of the Customs Act,1962 stated that every time they contacted only 'Krishna Shipping and Allied Services' for goods imported by M/s. Aditya Exports at email id import@krishnashippingkdl.com. Shri Ankit Sharma too in declaration dated 28.04.2023 confirmed that they have received documents in relation to import of M/s. Aditya Exports from 'Krishna Shipping and Allied Services.

2.4 Statement of Shri Vijay Sureshbhai Rathod, who is a salaried employee in M/s. 'Krishna Shipping and Allied Services' and works as an accountant for them, in his statement dated 24.04.2023 on being asked as to who looked after the work of Aditya Exports, stated that on the directions of Shri Pankaj Thakker, he looked after accounting work of Aditya Exports and made payments to CONFIDENTIAL from firm's account on direction of Shri Pankaj Thakker for expenses such as electricity bill charges, salary, GST payments, water charges etc.

2.5. Further, the partners in M/s Aditya Exports, Shri Naimish Himatlal Sodha and Shri Mehul Pujara admitted in their statements dated 25.04.2023 that they

1/1834082/2024

were mere fronts and the entire warehousing business was actually operated by Shri Pankaj Thakker of Gandhidham, who is a partner in Customs Broking firm M/s Krishna Shipping and Allied Services bearing License No. KDL/CHA/R/45/2011. With regard to import of Black Pepper from one Toryal Khan Mahsilzai Trading, Bagh Daud Market, Kabul, Afghanistan, Shri Mehul Pujara stated that he did not have any knowledge about the supplier of Black Pepper in Afghanistan and that he never ordered for import of any goods from Afghanistan; that he neither asked nor applied for Country of origin from any authority in Afghanistan; that all Bills of Entry were filed by Krishna Shipping and Allied Services on order of Pankaj Thakker; that Pankaj Thakker dealt with the suppliers for import of various goods for M/s Aditya Exports and maintained all records in his office at Krishna Clearing Agency, Gandhidham; that he was not aware of either M/s Cuthbert Winner LLP or M/s Cuthbert Oceans LLP; that only Pankaj Thakker dealt with clients and he was being paid only the rent for warehousing and all the business was being done by Pankaj Thakker himself. Shri Naimish Himatlal Sodha also gave the statement along same lines.

2.6. The statement of Shri Sanjeev Roy, Customs Representative, was recorded on 12.05.2023. On being asked what was his association with Aditya Exports and 'Krishna Shipping and Allied Services', he stated that he was working as Customs Executive for Aditya Exports from December,2022 to 26.04.2023 and he was hired by Shri Pankaj Thakker and tasked to perform Customs related work of Aditya Exports. On being asked how did he received his salary, he stated that Aditya Exports used to pay his salary through Aditya Exports account maintained in Bank of Baroda, KASEZ and this bank account was handled by Shri Pankaj Thakker.

2.7 During investigation, the bank account statements of M/s Krishna Shipping and Allied Services were procured from the banks and it has been found that the customs duty payments (IGST component) for DTA removal to M/s Cuthbert winner LLP and M/s cuthbert oceans LLP as well as container freight payments for transport of goods from Mundra to KASEZ were made by M/s Krishna Shipping and Allied Services, even though in terms of the Customs Act, 1962 read with SEZ Rules, 2006, the duty payments are required to be made by M/s cuthbert winner LLP and M/s Cuthbert oceans LLP. Further, a huge amount of money flowed from/to M/s Cuthbert winner LLP and M/s Cuthbert oceans LLP from to MIs Krishna Shipping and Allied Services. As per accounts summary, M/s Krishna Shipping and Allied Services is in receipt of Rs.20.17 Crore from M/s Cuthbert Winner LLP and Cuthbert Oceans LLP, whereas these firms are untraceable.

3. In view of above, the license of the CB was placed under immediate

1/1834082/2024

suspension as per Regulation 16 of Customs Brokers Licensing Regulations(CBLR),2018 read with Regulation 13(12) of CBLR, 2018 to prevent further misuse of the Customs Broker License and to safeguard the interest of revenue vide Order-in-Original No.KND- CUSTM-000-COM-03-2023-24 dated 28.07.2023.

*Regulation 16 of CBLR, 2018 — Suspension of license.*

*“(1) Notwithstanding anything contained in regulation 14,the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:*

*Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.*

*(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker.*

*Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe, passes an order for continuing the suspension, further procedure there after shall be as provided in regulation 17.”*

#### **DEFENCE SUBMISSION:**

4. M/s Krishna Shipping and Allied Services, Gandhidham vide the letters dated 07.08.2023 and 09.08.2023 submitted a representation to the suspension order dated 28.07.2023, wherein submitted as under:

#### **WRITTEN SUBMISSION DATED 07.08.2023:**

4.1 M/s. Krishna Shipping and Allied Services, Gandhidham (K), Custom Broker, have received impugned order suspending their Custom Broker license (“CB license” with immediate effect by involving provisions of Regulation 16( 1) of Custom Brokers Licensing Regulations, 2018 (“CBLR,2018”).

4.2 At the outset, the allegations and averments made in the impugned order

1/1834082/2024

were denied. Save and except what is specifically admitted therein, no part of the Order which is not expressly dealt with, was to be deemed to be admitted.

4.3 The impugned order for immediate suspension of the CB license is passed on the following premise:

*“6. Accordingly, in view of the aforesaid, it appears that the Customs Broker has failed to discharge the obligations as envisaged under Regulation 17(9) of CBLR, 2013 as detailed below:*

*“(i) Regulation 17 (9) of CBLR,2013 stated that “The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts of omission of his employees during their employment. ”*

*7. In the instant case, the investigations have clearly revealed that Shri Pankaj Thakker, Partner cum F-Card holder of Customs Broker firm M/s. Krishna Shipping & Allied Services... is the mastermind and beneficiary of entire fraud. Hence, CB has prima facie failed to follow the provisions of Regulation 17(9) of the CBLR, 2013.*

*8. In view of the above facts, it is prima facie evident that the Customs Broker has failed to discharge their obligations as a Custom Broker as required under Regulation 17 (9) of the CBLR, 2013.*

*9. Now, the Customs Broker M/s. Krishna Shipping and Allied Services, Gandhidham was granted Custom Broker License under regulation 9(1) of Customs House Agents Licensing Regulations, 2004. However, Customs Broker Licensing Regulations, 2018 shall apply to Customs Broker.*

*10. The Customs Broker M/s. Krishna Shipping and Allied Services, Gandhidham have failed to comply with the Regulation 10 (d) of CBLR, 2018 inasmuch as they failed (to) advice his client with the provisions of the Act. ”*

4.4. They submitted that unlike clearance from ports, etc., supply of goods from a Special Economic Zone (SEZ) to any party in Domestic Tariff Area (DTA) do not envisage any role of Custom Broker. The documents are filed by the SEZ unit or DTA unit with mutual consultation which is duly approved and assessed by the SEZ authorities. As such, there is no role of any Custom Broker in this transaction. In keeping with this, they have also not transacted any CB business in relation to any goods supplied by M/s. Aditya Exports. It was stated that they

1/1834082/2024

were neither appointed nor they have acted as CB license on behalf of M/s. Aditya Exports or any other client for clearance of goods from KASEZ. The clearance was carried out by using dongle they allocated to SEZ unit and not through CB. Hence, in the facts and circumstances where there is neither any appointment nor any role of a CB, it would be beyond the purview of CBLR, 2018 and also beyond the jurisdiction of Licensing Authority to allege breach of Regulation 10(d) of CBLR,2018 and suspend the CB license with immediate effect.

4.5 The CB submitted that hind attention is invited to the maxim, '*Lex non cogitad impossibilia*' - The law does not compel the doing of impossibilities, would squarely apply to the situation where they have been penalized for alleged failure to comply with Regulation 10(d) of CBLR,2018 despite the fact that there is neither any role of CB in clearance of goods from SEZ to DTA nor we were appointed for any purpose.

4.6 Without prejudice to above, it was pointed that CBLR,2018 would apply in this case (and not CBLR,2004 and/or CBLR,2013). Hence, the allegation regarding breach of Regulation 17 (9) of CBLR,2013 is without authority of law.

4.7 They appreciated that in absence of any appointment or role of CB between SEZ and DTA, averments made with reference to conduct of Shri Pankaj "fhalcker, F-Card holder, narrated in the impugned order is beyond the scope of expression "in the transaction of (CB) business" employed in Regulation 17(9) of CBLR, 2013.

4.8 In view of above, it was their submission that the impugned order is not in conformity with the facts available on record as well as lacks authority of law, being beyond the scope of CBLR, 2018.

4.9 Without prejudice to above, hind attention was invited to the decision in the case of Babaji Shivram Clearing & Carriers Pvt. Ltd. Versus Union of India reported at 2011 (269) E.L.T. 222 (Bonn.), wherein, Hon'ble High Court has held that:

*"9. Apart front the above suspension of a CHA licence under Regulation 20(2) of the 2004 Regulation can be ordered where immediate action is necessary. In the present case, the customs authorities in the middle of January, 2011 were aware of the fact that the documents submitted by the petitioners were fabricated, however the impugned order has beenpassedbelatedlyon28-3-2011"*

I/1834082/2024

4.10 The CB submitted that in the above case, action taken after 02 months did not satisfy the requirement of “immediate action” and suspension was revoked. Considering that suspension has been ordered in this case after over 03 months, it was urged upon to revoke the suspension by following the abovementioned decision.

4.11. They also took opportunity to place on record that on abrupt suspension of CB license, livelihood of scores of employees is at stake.

4.12 It was prayed to revoke the suspension of CB license by giving due consideration to above facts and legal position and obliged.

#### **WRITTEN SUBMISSION DATED 09.08.2023:**

4.13 In this regard, it is reiterated that M/s. Krishna Shipping and Allied Services, Gandhidham (IN) were never appointed as Custom Broker in connection with clearance of imported goods by M/s. Aditya Exports in KASEZ to any DTA party. And that this fact is a matter of record and there is no dispute in this regard.

4.14 In the most recent decision dated 02.08.2023, Hon’ble Tribunal has held in the case of M/s. Sun Clearing Agency v/s Commissioner of Customs (General), Mumbai, 2023 (8) TMI 360 — CESTAT MUMBAI that:

*“9. From the perusal of the records, we further find that the appellants have not been engaged as the customs broker in the above transaction of imported goods from INCH to ICD, Pune. While the investigation reveals that Shri Kishor Auti, Proprietor of appellants CB firm had introduced or acted as via-media between Shri Bhavik Mehta, the beneficial importer and Shri Sagar Rohidas Bangar, who had handled the actual work of customs formalities. The appellants and/or the proprietor i.e., Shri Kishor Auti of the appellants CB firm was not engaged as customs broker in any of the transaction involving the above violations in the instant case. It is true that as an individual person Shri Kishor Auti, is responsible for the omission and commission which had led to import of e-waste in violation of the Customs Act, 1962 read with relevant Rules and Regulations. We also find that separate show cause proceedings have been initiated for the role played by Shri Kishor Auti in his individual capacity in the above transactions under the Customs Act, 1962 by DRI vide show-cause notice dated 22.09.2020. In view of the above factual details, we are of the considered view that **under no circumstances, particularly when the appellants have not been***



I/1834082/2024

***engaged as a customs broker in tote aforesaid transaction, there can be a case for taking action against violations of CDLR. Hence, the impugned order does not sustain on this very ground alone.***

4.15. The CB submitted that it is also a matter of record that DRI is carrying out investigation in the matter involving Shri Pankaj Thakker in his individual capacity and not against M/s. Krishna Shipping and Allied Services. As a matter of facts, M/s. Krishna Shipping and Allied Services was never appointed as Custom Brother in connection with clearance by M/s. Aditya Exports from KASEZ. Hence it was prayed to apply the above decision to instant case and revoke the suspension of CB license.

**PERSONAL HEARING:**

5. Personal hearing in the matter was held on 08.08.2023 at 11.00 AM and Shri Vikas Mehta, Consultant has attended the personal hearing virtually. He reiterated the written submission dated 07.08.2023. He further requested to revoke the suspension of Customs Broker Licence.

6. After the deliberation of submissions of the CB and facts enunciated above, suspension was continued under regulations 16(2) of the CBLR, 2018 vide O-I-O No. KND-CUSTOM- 000-COM-05-2023-24 dated 17.08.2023 by the Commissioner, Customs House Kandla.

7. Meanwhile, another offence report dated 04.08.2023 was also received from the DRI, RU, Gandhidham vide F. No. DRI/AZU/GRU/Int-28/Aditya Exports/2022/ VII under which the role of the Custom Broker in a similar case of M/s. Aditya Exports was highlighted and requested for initiating necessary action against the CB under the provisions of the Customs Brokers Licensing Regulation, 2018.

7.1 Acting upon a specific intelligence of evasion of Customs Duty by way of diversion of imported goods from Kandla Special Economic Zone (KASEZ) to Domestic Tariff Area (DTA) in guise of export to Bangladesh, a case was booked by DRI, RU, Gandhidham against M/s. Aditya Exports, Gandhidham under provisions of Customs Act, 1962 read with SEZ Act, 2005 and Rules framed thereunder.

7.2. Whereas as per intelligence received, Arecanuts/Betel Nuts and Black Pepper/White Pepper were imported duty free and warehoused in KASEZ Unit M/s. Aditya Exports for the purpose of re-export to Dhaka, Bangladesh; that after clearance from KASEZ, the imported goods were being diverted to domestic market instead of being exported. Thereafter, investigation was initiated which revealed that M/s. Aditya Exports had warehoused the imported Arecanuts/Betel

1/1834082/2024

nuts, Black/White pepper by filing warehousing Bill of Entry and subsequently filed Shipping Bills for export of such imported goods on behalf of some overseas companies. The imported goods were shown exported to Bangladesh through LCS Mankachar, whereas, enquiries carried out with LCS Mankachar under Customs Division, Dhubri revealed that no such exports of goods pertaining to M/s Aditya Exports had ever occurred from the said LCS; that fake export documents by putting fake stamp of non-existing customs officers at LCS Mankachar, Dhubri, Assam were created as evidence of export. The name of Customs officers for whom signature were made on export documents, were fake and/or not posted at LCS Mankachar, Dhubri, Assam. During the course of investigation, it was reported by DRI, Guwahati & Customs LCS, Mankachar that no exporter by the name M/s Aditya Exports was found and no Indian firm exporting goods to the declared buyers viz. M/s. Sumec Trade International, Dhaka, Bangladesh and M/s GM Trading, Dhaka, Bangladesh was found.

7.3. Investigation further revealed that as per well hatched conspiracy, the goods were first imported duty free in KASEZ, de-stuffed in warehouse of M/s. Aditya Exports and later on, the same were taken out of the SEZ in trucks having false number plates for export. After coming out of SEZ gate the actual number plates of the trucks were used. As per the GPS data of such trucks, it was revealed that there was no movement of goods beyond Sonipat (Haryana). The data obtained from NICDC Logistics Data Services (NLDS) for movement of export Containers, also indicated movement of containers crossing tolls of Rajasthan and going upto Sonipat (Haryana) and returning back from there. No movement of containers was shown towards LCS, Mankachar (Assam); Searches carried out at multiple locations across India resulted in recovery of incriminating documents evidencing diversion of goods and portraying role of persons involved therein. Two persons viz. Shri Mehul Navinchandra Pujara, proprietor of M/s. Aditya Exports and Shri Pankaj Karsanbhai Thakkar, Partner of Customs Broker firm M/s. Krishna Shipping & Allied Services were arrested under provisions of Customs Act, 1962 for their active role in the conspiracy. The Duty evasion involved in this case is approx. Rs. 231 Crore.

7.4. Preliminary investigations have revealed that Shri Pankaj K. Thakker, Partner of M/s Krishna Shipping & Allied Services, Gandhidham is one of the key persons behind the huge duty evasion by way of the diversion of duty free import goods viz. Arecanuts/Betel Nuts and Black Pepper/White Pepper cleared in the name of M/s. Aditya Exports in the Domestic Market. The subject goods were imported duty free in the warehouse of M/s Aditya Exports from various UAE based companies viz. M/s Rakayez General Trading LLC, M/s. Divine General Trading LLC, M/s. Technozone General Trading LLC etc.

7.5. During the course of investigation, search was carried out at the office premises of M/s Krishna Shipping & Allied Services under Panchnama dated

1/1834082/2024

27.07.2022. During the search, Shri Pankaj K. Thakkar, stated that his firm M/s Krishna Shipping & Allied Services was handling the work related to loading, unloading, storage of goods in warehouse of M/s. Aditya Exports, KASEZ, Gandhidham and also do documentation work pertaining to import, export and DTA clearance of M/s. Aditya Exports. He also, stated that though his name does not appear on registration documents of M/s. Aditya Exports, he manages the operations of M/s. Aditya Exports. During the search carried out at the premises of M/s Krishna Shipping & Allied Services under Panchnama dated 27.07.2022, the import-export related documents pertaining to M/s. Aditya Exports were resumed duly kept in the file covers of M/s Krishna Shipping & Allied Services. Further, in his statement, Shri Pankaj K. Thakkar had stated that the import team of M/s. Krishna Shipping and Allied Services used to coordinate with the shipping line and complete delivery order and Transshipment permit (TP) formalities in respect of consignments pertaining to M/s. Aditya Exports. He added that the export documents provided by shipper on the email ID of M/s. Aditya Exports were forwarded to email ID of his CB firm from email ID of M/s. Aditya Exports; that there after his team used to prepare the Shipping Bill and send for the confirmation to the shipper. He further deposed that after confirmation, his team used to send shipping Bill to email Id of "M/s. Aditya Exports to" process the same at Customs KASEZ.

7.6. During investigation it was noticed that after getting the shipping bills assessed, Shri Pankaj K. Thakkar, Partner of Customs Broker firm M/s. Krishna Shipping & Allied Services used to hand over the documents such as shipping Bill, invoice, packing list etc. to the drivers of the trailer/vehicle carrying export containers; that along with the documents, he used to give the driver empty envelope mentioning address of M/s Aditya Exports Warehouse to send the endorsed Shipping Bills as proof of export. Investigation revealed that such envelopes containing proof of export documents having forged signature & stamped of Customs officers were received by their through Shree Nandan Courier Limited from Karad, Maharashtra. These bogus/fake proof of export for the consignments of M/s. Aditya Exports were submitted to KASEZ Customs authorities. On being asked why the documents were dispatched in courier from Karad, Maharashtra which was not in the route between Assam and Mundra, Gujarat and why the same were not received back with the driver of vehicle, Shri Pankaj K. Thakkar failed to give any justifiable reply and stated, that the proper reply of the said question could be given by Shipper or the transporter. On being asked whereabouts of the shipper, he again failed and stated that he was not aware. On being asked to comment upon the movement of vehicles/tracking of containers-route as per system data which did not show movement of container to Bangladesh, Shri Pankaj IN. Thakkar did not comment and stated that he could not give answer to this question.

I/1834082/2024

7.7. When statements of transporters viz. Shri Mahesh Sharma, Proprietor of M/s Evergreen Cargo Carrier, Mumbai and Shri Abdullah Azizullah Khan, Prop. National Cargo Movers, Mumbai who provided trucks for transportation of goods pertaining to M/s. Aditya Exports, Shri Pankaj K. Thakkar stated that he did not agree with these statements as he did not know them. The denial off acts merely on the ground /claim that he did not know such persons clearly shows non-cooperation in the investigation on the part of Shri Pankaj K.Thakker. He also did not provide address and other whereabouts of one of the key person in the case viz. Shri Manish Kumar Jain though he stated that he was knowing Shri Manish Kumar Jain. Similarly, he showed his disagreement with the facts narrated about Number Plates of the loaded Trucks/Trailers, coming from M/s. Aditya Exports warehouse by Shri Chandradeepsinh Sukhdevsinh Parmar, Weighment data entry operator of KASEZ without any justifiable ground. As regards the statements of cold storage owners/key persons, Shri Pankaj I4. Thakkar stated that the question is not applicable to him and hence no comments were offered. Being a partner of Customs Broker firm, such non-cooperation on investigation in a case involving revenue of hundreds of Crores rupees, cannot be expected from a prudent Customs Broker, on the contrary, he attempted to mislead the investigation by submitting evasive/incorrect information about representative of shippers, and other conspirators.

7.8. From above, it emerged that Shri Pankaj K. Thakkar, Partner of Customs Broker firm M/s Krishna Shipping & Allied Services, in active connivance with other conspirators allowed and facilitated the diversion of duty free goods imported at and cleared from M/s. Aditya Exports in the guise of export to Bangladesh, which resulted in evasion of huge amount of Customs Duty. Shri Pankaj K. Thakkar was accordingly arrested on 13.11.2022 under section 104 of the Customs Act, 1962.

7.9. From the investigation carried out, it appears that the said Customs Broker firm M/s Krishna Shipping & Allied Services through its Partner and other associates has connived with the conspirators and abetted the fraudulent export resulting in evasion of huge amount of Customs Duty.

**Role & liability of Customs Broker under CBLR,2018; as per DRI Ludhiana:**

8. In view of the offence report received from DRI, Ludhiana, it appears that the Customs Broker has failed to discharge the obligations as envisaged under Regulation 17 (9) of CBLR, 2013(now Regulations 13(12) of CBLR, 2018) as detailed below:

(i) Regulation 17(9) of CBLR, 2013 (now Regulations 13(12) of CBLR, 2018) states that “The Customs Broker shall exercise such supervision as may be

1/1834082/2024

necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts of omissions of his employees during their employment”.

8.1. Whereas, the investigations have clearly revealed that Shri Pankaj Thakker, Partner cum F-Card holder of Customs Broker firm M/s Krishna Shipping and Allied Services (CB License No. IIDL/CHA/R/45/2011) is the mastermind and beneficiary of entire fraud in which Customs duty of Rs.66.10 Crore was evaded in collusion with M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP on 1596 MT of 'black pepper' removed into DTA at NIL rate of customs duty by claiming it to be of Afghanistan origin. DTA clearance to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was made through M/s. Aditya Exports which is controlled and operated by Shri Pankaj Thakker only. Hence, it is prima facie evident that the Customs Broker has failed to discharge their obligations as a Custom Broker as required under Regulation 17(9) of the CBLR, 2013(now Regulations 13(12) of CBLR, 2018).

**Role & liability of Customs Broker under CBLR, 2018; as per DRI Gandhidham:**

9. In a statement to DRI, Gandhidham, Shri Pankaj K. Thakkar stated that his CB firm M/s. Krishna Shipping and Allied Services was dealing with consignments pertaining to M/s. Aditya Exports which is also supported with the facts that M/s. Krishna Shipping and Allied Services had filed SCA bearing no. 23177/2022 before Hon'ble Gujarat High Court in connection with clearance of goods detained by DRI under Panchnama dated 26.07.2022 at warehouse of M/s. Aditya Exports. Thus, not declaring name of CB firm M/s. Krishna Shipping and Allied Services, in the import/export documents of M/s. Aditya Exports is immaterial. Moreover, in terms of Section 22 read with Section 19 of the Partners Act, 1932, where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner. Thus, it appears that on the basis of offence committed by Shri Pankaj K. Thakkar, Partner of M/s. Krishna Shipping & Allied Services, the said Customs Broker firm M/s. Krishna Shipping and Allied Services has violated the provisions of Regulations 10 (d), 10 (e), 10 (n) and 10(q) of CBLR, 2018.

10. The Customs Broker M/s Krishna Shipping and Allied Services, Gandhidham was granted Custom Broker License under regulation 9(1) of

I/1834082/2024

Customs House Agents Licensing Regulations, 2004. However, Customs Broker Licensing Regulations, 2018 shall apply to Customs Broker who has been licensed under Customs House Agents Licensing Regulations, 2004 as per Regulation 1(3) of Customs Broker Licensing Regulations, 2018.

**From the above, it appeared that,**

11. The Customs Broker M/s Krishna Shipping and Allied Services, Gandhidham failed to comply with the provisions of Regulations 10 (d), 10 (e), 10 (n), 10(q) and 13(12) of CBLR, 2018 provided as under:

Regulation 10: Obligations of Customs Broker. — A Customs Broker shall

(d) 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,

(e) 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,

(n) 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;

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

Regulation 13 (12) (erstwhile 17 (9) of 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.*

11.1 It appears that CB has not disclosed to Customs Authorities at KASEZ that export documents, which were found to be fake and forged, were dispatched in courier from Karad, Maharashtra which is not in the route between Assam and Mundra, Gujarat. The Customs Broker has attempted to hide the fraud of non-export of consignments by submitting these documents to KASEZ authorities. CB have deliberately committed the offence and failed to bring the gross mis-declaration in export documents to the notice of the customs authorities. Further, it appears that Customs Broker has made no attempt to seek any authorization from the companies regarding their representative Aman Verma. When the Customs Broker was not even direct contact with the clients, they should not have

I/1834082/2024

filed Bills of Entry or Shipping Bills. Shri Pankaj K. Thakkar never provided the whereabouts of Shri Aman Verma. Thus, it appears that CB did not verify the genuineness of shippers and though being in contact with the key persons of UAE based companies viz. M/s Rakayez General Trading LLC, M.s Divine General Trading LLC, M/s. Technozone General Trading LLC etc., he deliberately did not provide the correct and complete whereabouts of such key persons. The Customs Broker M/s Krishna Shipping and Allied Services, Gandhidham contravened the provisions of Regulations 10 (d), 10 (e), 10 (n), 10(q) and 13(12) of CBLR, 2018.

12 It is brought out that the CB license was suspended under Regulation 16 of CBLR, 2018 read with Regulation 10 of CBLR, 2018 vide Order-in-Original No. KND- CUSTM-000-COM-03-2023-24 dated 28.07.2023 and suspension was continued under regulations 16(2) of the CBLR, 2018 vide O-I-O No.KND-CUSTM-000-COM-05-2023-24 dated 17.08.2023 by the Commissioner, Customs House Kandla. Thus, further proceedings are now being initiated in terms of Regulation 17 of CBLR,2018.

13 Whereas Regulation 17 of CBLR,2018 provides Procedure for revoking license or imposing penalty, which is submitted here-in-under:

*(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 in 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.*

*(1).....*

*(2) 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.*

*(3)....*

*(4)....*

*(5)....*

*(6)....*

*(7)....*

I/1834082/2024

(8).....

(9).....

Whereas 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 the 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*

Whereas 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.

14. As mentioned in previous Paras that the CB has contravened/failed to comply with the provisions of Regulation 10 (d), 10 (e), 10 (n), 10(q) and 13 (12) of CBLR, 2018 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.

15. Now, in view of above and in terms of provisions of Regulation 17 of Customs Broker Licensing Regulation (CBLR), 2018, M/s Krishna Shipping and Allied Services, having registered office at Office No. 53/54-A, Transport Nagar, NH-8, Gandhidham-370201, Kutch, Gujarat holding Customs Broker License No.KDL/CHA/R/45/2011 (PAN No. AADFK8760C) dated 20.12.2011, valid upto 19.12.2031, are hereby called upon to show cause to the Commissioner of Customs, Custom House Kandla as to why;

(i) The Customs Broker License No.KDL/CHA/R/45/2011 (PAN No. AADFK8760C) dated 20.12.2011, valid upto 19.12.2031, issued to them should not be revoked under Regulation 14 of Customs Brokers Licensing Regulations,



1/1834082/2024  
2018 read with regulation 17 of CBLR, 2018.

(ii) The security furnished by the Customs Broker for issuance of Customs Broker License No.KDL/CHA/R/45/2011 (PAN No. AADFK8760C), 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 (d), 10 (e), 10 (n) and 10(q) of CBLR, 2018.

16. It is brought out in terms of Regulation 17 of Customs Brokers Licensing Regulations, 2018, Shri Brajesh Kumar, Deputy Commissioner of Customs, Custom House Kandla is being nominated as the inquiry Officer in the case. The Inquiry officer has submitted his Inquiry report to the Commissioner, Customs House, Kandla vide letter F. No. CUS/LIC/MISC/311/2033-CB dated 15.12.2023 (received on 18.12.2023).

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

17. The CB M/s Krishna Shipping & Allied Services vide a letter dated 16.10.2023 stated that they are in the receipt of the subject Show Cause Notice which relies upon the Offence Report F. No. DRI/LDZUI856/INT-NIL/ENQ-1s/2023 dated 07.07.2023 and F. No.: DRI/AZU/GRU/Int-28/Aditya Exports/2022/VII dated 04.08.2023. They further requested for the copy of statements of the individuals that are the relied upon documents of this case.

17.1. Later, M/s Krishna Shipping and Allied Services furnished another written submission dated 04.12.2023 to the Inquiry Officer, wherein they, *inter alia*, stated that they must be provided certified copy of 2 offence reports as well as all the statements that are relied upon for the purpose of issuing the notice; that they have not been provided with any document showing their name as Custom Broker on the same; that the current inquiry is not based on any document bearing their name as Custom Broker; that a Custom Broker and his employee (Shri Pankaj K. Thakker) are two different legal entities and hence the former cannot be held responsible for the acts or omission of latter. Further, they have submitted that they were never appointed as Custom Broker (which is duly admitted in para 9 of the notice), hence violation of Regulation 10(d), 10(e), 10(n) and 10(q) of CBLR, 2018 is mis-directed against them. They have also submitted that the

1/1834082/2024

alleged acts of omission and commission on the part of Shri Pankaj K. Thakker in his private capacity cannot be foisted on the CB M/s. Krishna Shipping & Allied Services firm by invoking Regulation 13(12) without establishing that the said acts were in the transaction of CB M/s. Krishna Shipping & Allied Services business.

17.2. Personal Hearings were fixed on 29.11.2023 (communicated vide letter dated 23.11.2023), 03.12.2023 (communicated vide letter dated 29.11.2023) and 12.12.2023 (communicated vide letter dated 08.12.2023) to M/s Krishna Shipping and Allied Services and Shri Pankaj K. Thakker, in the matter of Show Cause Notice dated 22.09.2023 issued to the Customs Broker vide F. No. CUS/LIC/MISC/311/2033-CB. However, they chose not appear before the Inquiry Officer on any of these three occasions. As such the available relied upon documents could not be given to him as desired by him.

### **Discussion & Findings of the Inquiry Officer:**

18. The Inquiry officer has gone through the subject SCN, the relevant documents and the written reply of the CB, M/s Krishna Shipping & Allied Services. Adhering to the principle of *audi alteram partem*, the CB M/s. Krishna Shipping & Allied Services were given three opportunities on different dates requesting them to appear before Inquiry officer and present their case and examine the available relied upon documents. However, they did not appear on any of these three occasions. As the subject inquiry is a time bound affair, it cannot wait forever for the CB M/s. Krishna Shipping & Allied Services to appear and clarify his stand. As such Inquiry officer proceed to conclude the enquiry based on the available documents and statements of the shipping agents connected to the Offence Report F. No. DRI/LDZU1856/INT-NIL/ENQ-1s/2023 dated 07.07.2023. Inquiry report was received on 18.12.2013.

19. Report of the inquiry officer is reproduced below:-

*“28. I find that Shri Pankaj K. Thakker, partner cum F-Card of the Customs Broker License No. KDL/CHA/R/45/2011 (PAN No. AADFK8760C) dated 20.12.2011, is an expert in the matters of conceiving and executing financial skullduggeries and the kingpin of duty/tax evasions who has been doubling up as the only active partner of the import-export firm named M/s Aditya Exports, Gandhidham, Gujarat. With an unflinching hold on both the Exim Firm and CB Firm M/s. Krishna Shipping & Allied Services, he has indulged into two major offences unearthed by the DRI, Ludhiana Unit and DRI, Gandhidham Unit*

*and caused a dent of Customs revenue to the tune of Rs 300 crores in the two cases alone that are being discussed in this report.*

29. *As a fall out of the suspension of their CB M/s. Krishna Shipping & Allied Services Licence, they have furnished a written reply dated 09.08.2023 to the Commissioner of Customs citing the maxim, "Lex non cogitat impossibilia" and claiming their innocence in the present case of DRI, Ludhiana Unit as they have not played any role as the CB M/s. Krishna Shipping & Allied Services in the DTA clearance of the black pepper by M/s Aditya Exports from KASEZ. However, the Offence report dated 07.07.2023 furnished by DRI, Ludhiana Unit reveals that all the Bills of Entry for import of black pepper by M/s Aditya Exports of KASEZ have been filed by the CB M/s Krishna Shipping & Allied Services based on fake Bills of Lading and Country of Origin Certificates. The forged Bills of Lading and Country of Origin Certificate have been used to evade payment of Customs Duty mis-declaring the goods as of Afghani Origin whereas the goods were not originated from Afghanistan and were loaded at Jebel Ali Port, Dubai as detailed at 4 of this Inquiry Report. I find that the CB M/s. Krishna Shipping & Allied Services in their written submission dated 09.08.2023 have stated that "unlike clearance from ports, supply of goods from SEZ unit to DTA do not envisage any role of CB M/s. Krishna Shipping & Allied Services and thus they have not filed any Bill for clearance of black pepper from Aditya Exports to any DTA unit." They are however silent on the fact that they have filed all the Bills of Entry for import from Jebel Ali port to Aditya Exports situated in the SEZ. Further, based on an afterthought the CB M/s. Krishna Shipping & Allied Services in their written reply dated 04.12.2023 have stated that they have not filed any import or export document for Aditya Exports as the CB.*

30. *I find that the CB M/s. Krishna Shipping & Allied Services's explanation cannot be accepted because the Business Development Manager Shri Ankit Sharma of M/s. Evershine Container Line Pvt. Ltd. who were the shipping agents of the black pepper cargo from Jebel Ali port to KASEZ based unit Aditya Exports has appeared before me on 24.11.2023 and has confirmed the veracity of his statement dated 28.04.2023 given before DRI, Ludhiana Unit and has reiterated that the Bills of Lading produced by Aditya Exports were fake, goods had sailed from Jebel Ali port and not from Bandar Abbas and M/s Evershine Container line Pvt. Ltd. had received all the documents including the fake Bills of Ladings from M/s Krishna shipping & Allied Services. His statement given to DRI was voluntary and without any duress. Also, Shri Sudhakar Chikati, Branch Manager of M/s. Aiyer Shipping Pvt Ltd.,*

I/1834082/2024

another shipping agent of Aditya Exports was contacted by the Inquiry Officer on 13.12.2023 at 08.50 hrs. on his mobile phone No. 9825283474 and he confirmed that his statement dated 26.04.2023 given before DRI was without any duress and all the BLs pertaining to the import of black pepper imports by Aditya Exports were fake as the goods were shipped from Jebel Ali Port and were not of Afghani origin. He apologized for not being able to attend the inquiry in person as he is busy attending to the summons issued to him by the sleuths of Gujarat Police who are also investigating the Offence Report of DRI, RU, Gandhidham vide F.No. DRI/AZU/GRU/Int-28/Aditya Exports/2022/VII dated 04.08.2023 wherein role of Shri Pankaj K. Thakker as the partner of Aditya Export and as the partner of CB, M/s Krishna Shipping & Allied Services are being probed. Incidentally, this Offence Report of illegal diversion of Areca nuts/betel nuts and black pepper/white pepper also is part of this Inquiry. Further, in his statement, Shri Pankaj K. Thakker had stated that the import team of M/s. Krishna Shipping and Allied Services used to coordinate with the shipping line and complete delivery order and Transshipment permit (TP) formalities in respect of consignments pertaining to M/s. Aditya Exports. He added that the export documents provided by shipper on the email ID of M/s. Aditya Exports were forwarded to email ID of his CB M/s. Krishna Shipping & Allied Services firm from email ID of M/s. Aditya Exports; that thereafter his team used to prepare the Shipping Bill and send for the confirmation to the shipper. He further deposed that after confirmation, his team used to send Shipping Bill to email Id of "M/s. Aditya Exports to" process the same at Customs KASEZ. Above facts establishes that M/s Krishna Shipping & Allied Services acted as Custom Broker on behalf of M/s Aditya Exports, KASEZ, Gandhidham for the said import. The CB M/s. Krishna Shipping & Allied Services have furnished 4 written submissions dated 07.08.2023, 09.08.2023, 16.08.2023 and 04.08.2023 in the matter and in none of these submissions he has retracted his statement given to DRI units. Even during the Personal Hearing before the Commissioner of Customs on 07.08.2023, the consultant for the CB M/s. Krishna Shipping & Allied Services has not confuted the statement of CB M/s. Krishna Shipping & Allied Services given before DRI Units. As such the statements furnished under Section 108 of the Customs Act, 1962 has to be considered as valid and accordingly Shri Pankaj K. Thakker has accepted that he has done everything related clearance of import and export cargo of Aditya Exports as described supra.

31. I also find that contrary to the claim of the CB, M/s Krishna Shipping & Allied Services have paid the Customs Duty (IGST portion) and transportation charges from their account and huge amounts of money have been transferred from/to either M/s Cuthbert Winner LLP or M/s

*Cuthbert Oceans LLP. Also, during the search by DRI, all the import and export related documents were recovered from the files of M/s Krishna Shipping & Allied Services as per Panchnama dated 27.07.2022. As the CB M/s. Krishna Shipping & Allied Services did not appear before the Inquiry Officer during the PHs and did not produce the bank Accounts of M/s Krishna Shipping & Allied Services proving that no money has been transferred to /from M/s Cuthbert Winner LLP, I understand that they have nothing concrete to submit in their defence. Therefore, I find that the CB M/s. Krishna Shipping & Allied Services is involved and is neck deep in the quagmire as described in these two episodes of tax evasions by M/s Aditya Export and hence they fall well within the scope of CBLR, 2004, CBLR, 2013 & CBLR, 2018.*

32. *As the CB M/s. Krishna Shipping & Allied Services has used fake Bills of Lading and Countries of Origin certificates for import of black pepper from Dubai and claiming fraudulently from Afghanistan, as mentioned hereinbefore, they have failed to:*

- i) advise his client to comply with the provisions of the Act, other allied Acts and the Regulations 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;*
- ii) 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;*

*Accordingly, I find that the CB M/s. Krishna Shipping & Allied Services have failed to adhere to Regulation 10(d) and 10(e) of CBLR, 2018.*

33. *As discussed in Para 8 hereinbefore, perusal of accounts summary, M/s Krishna Shipping and Allied Services has revealed that they are in receipt of Rs. 20.17 Crore from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, whereas these firms are untraceable. As such the CB M/s. Krishna Shipping & Allied Services has failed to:*

*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.*

*Also, the CB M/s. Krishna Shipping & Allied Services have not attended the PHs given to them by the Inquiry Officer to prove their omissions and*

*commissions otherwise.*

*Accordingly, I find that the CB M/s. Krishna Shipping & Allied Services have failed to adhere to Regulation 10(n) of CBLR, 2018.*

34. *I find that during the course of the said investigation, DRI recorded statement of Shri Mahesh Sharma, Proprietor of M/s Evergreen Cargo Carrier, Mumbai and Shri Abdullah Azizullah Khan, Prop. National Cargo Movers, Mumbai who provided trucks for transportation of goods pertaining to M/s. Aditya Exports, Shri Pankaj K. Thakker stated that he did not agree with these statements as he did not know them. The denial of facts merely on the ground /claim that he did not know such persons clearly shows non-cooperation in the investigation on the part of Shri Pankaj K. Thakker. He also did not provide address and other whereabouts of one of the key persons in the case viz. Shri Manish Kumar Jain though he stated that he was knowing Shri Manish Kumar Jain. Similarly, he showed his disagreement with the facts narrated about Number Plates of the loaded Trucks/Trailers, coming from M/s. Aditya Exports warehouse by Shri Chandradeepsinh Sukhdevsinh Parmar, Weighment data entry operator of KASEZ without any justifiable ground. As regards the statements of cold storage owners/key persons, Shri Pankaj K. Thakker stated that the question is not applicable to him and hence no comments were offered. Being a partner of Customs Broker firm, such non-cooperation on investigation in a case involving revenue of hundreds of Crores rupees, cannot be expected from a prudent Customs Broker, on the contrary, he attempted to mislead the investigation by submitting evasive/incorrect information about representative of shippers, and other conspirators. Further, the CB M/s. Krishna Shipping & Allied Services have not cooperated with the Enquiry Officer in the ongoing inquiry against them as they deliberately did not appear on any of the three occasions of personal hearings. From the above, it is conclusively established that Customs Broker M/s Krishna Shipping and Allied Services, Gandhidham have failed to comply with the Regulation 10 (q) of CBLR, 2018 provided as under:*

*A Customs Broker shall Co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.*

35. *It is alleged in the instant Show Cause Notice that the CB M/s. Krishna Shipping & Allied Services have failed to adhere to the provisions of Regulation 13(12) of CBLR, 2018 as detailed in Para 11.1 therein. I find that Shri Pankaj K. Thakker is the partner of the CB M/s. Krishna*

*Shipping & Allied Services Firm and the F- Card holder and he is the main person in the firm. The other partner of this firm is his father Shri Karsanbhai Morulal Thakker who does not have an F-Card issued to him. As Shri Pankaj K. Thakker is the kingpin of the frauds done by M/s Aditya Exports and he is not an employee of the CB M/s. Krishna Shipping & Allied Services firm, the allegation of failure to adherence to the Regulation 13(12) of the CBRL, 2018 may not be proved in his case. It is rather a case wherein the main partner of the CB M/s. Krishna Shipping & Allied Services Firm has done the duty evasions under a conspiracy who also happens to be the main partner in the Aditya Exports. Regulation 13(12) of the CBRL, 2018 reads as follows:*

*The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in transaction of business and he shall be held responsible for all the acts or omissions of his employees during their employment.*

36. *However, all the fraudulent acts and violations of CBRL, 2018 cannot be done by the main partner of the firm. The filing of Bills of Entry with fake BLs and COCs and fake Shipping Bills in the 2<sup>nd</sup> offence of this case has been repeatedly done by the employees of the CB M/s. Krishna Shipping & Allied Services who were working under Shri Pankaj K. Thakker. Shri Pankaj K. Thakker by himself has not filed all the fake import and export documents in these two offences. As such both father and son duo as the partners of the CB, firm have failed to supervise the proper conduct of their employees. Therefore, I find the CB M/s. Krishna Shipping & Allied Services guilty of violation of Regulation 13(12) of CBLR, 2018 in this inquiry.*

37. *In view of the above facts, allegations contained in the Show Cause Notice regarding attraction of Regulation 18 of CBLR, 2018 thus are true and valid and submission by the Custom Broker firm is fallacious and not tenable as discussed hereinbefore.*

### **Conclusion**

38. *In light of the above, the suitable action i.e. revocation of licence, forfeiting of the security and imposition of penalty, as deemed fit, against the CB M/s. Krishna Shipping & Allied Services may be taken under Regulation 14 of CBLR, 2018 read with regulation 17 of CBLR, 2018 for failure to comply with the provisions of Regulation 10(d), 10(e), 10(n), 10(q) and 13(12) of CBRL, 2018”.*

**Conclusion of the Inquiry officer:**

20. Ongoing through the Inquiry report submitted by the Inquiry officer, it is observed that after consideration of the facts/documents related to the case, the Inquiry officer recommended that suitable action i.e. revocation of licence, forfeiting of the security and imposition of penalty, as deemed fit, against the CB M/s. Krishna Shipping & Allied Services may be taken under Regulation 14 of CBLR, 2018 read with regulation 17 of CBLR, 2018 for failure to comply with the provisions of Regulation 10(d), 10(e), 10(n), 10(q) and 13(12) of CBLR, 2018.

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

21. As the Provisions of CBLR, 2018, a copy of Inquiry Report dated 15.12.2023 was sent to CB vide letter dated 02.01.2024 to seek their representation on the same, if any, within stipulated time period as prescribed under Regulation 17(6) of CBLR, 2018. 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 22.02.2024.

22. Shri Vikas Mehta, Consultant and Shri K. M. Thakker, Partner of CB M/s. Krishna Shipping and allied Services appeared for the personal hearing on 22.02.2024. During the Personal Hearing, they have filed a written submission dated 22.02.2024 wherein they have submitted that, they have not been provided offence reports as well as statements and other documents, if any, and requested to give 15 days to make written as well as oral submission. Further, it is stated by them that they were never appointed as Customs Broker. Hence, violation of CBLR, 2018 as alleged is misdirected against them, and that such violations are not in the transaction of CB business, and they are omission and commission of Shri Pankaj Thakker in his personal capacity. I find that no further submissions on record made by the CB after personal hearing.

23. As regards above claim of CB made with respect to their pending submissions in relations to various allegations in the SCN, I find that:

23.1. SCN lays down the details of the violation on specific counts.

23.2. The warehousing of the goods into the KASEZ is attended to by CB.

23.3. Allegations with respect to Shri Pankaj K. Thakker also refers to involvement of CB and its employees.

23.4. In terms of regulation 17 (7) of Custom Broker Licensing Regulation, 2018, an opportunity of personal hearing on 22.02.2024 is already given to the



1/1834082/2024

CB. The Inquiry officer has already given 03 Personal Hearing to the CB and 30 days time has also been given to the CB for representation on the Inquiry report submitted by the CB, and I find that no further submission is made by the CB till today after personal hearing.

I also find that the CB has not appeared for the Personal Hearing before the Inquiry officer and also not made any representation against the Inquiry report submitted to them. Sufficient opportunity has already been given to the CB for making their representation.

24. Coming to the submission that the violations alleged in the SCN are not in the transaction of CB business, and that said omission and commission are by Shri Pankaj Thakker in his personal capacity, I find that:

24.1. As the above states, the Bills of Entry and the documents are filed by the CB at the time of warehousing.

24.2 Para 7.5 of SCN brings on record the statement under Section 108 of CA 1962 of Shri Pankaj Thakker that '*the import team of M/s. Krishna Shipping and Allied Services used to coordinate with the shipping line and complete delivery order and Transshipment permit (TP) formalities in respect of consignments pertaining to M/s. Aditya Exports. He added that the export documents provided by shipper on the email ID of M/s. Aditya Exports were forwarded to email ID of his CB firm from email ID of M/s. Aditya Exports; that there after his team used to prepare the Shipping Bill and send for the confirmation to the shipper*'.

This is confirmed in the findings of Inquiry report.

24.3. Para 7.5 of the SCN also refers to the statement of Shri Pankaj Thakkar and says that *his firm M/s Krishna Shipping & Allied Services was handling the work related to loading, unloading, storage of goods in warehouse of M/s. Aditya Exports, KASEZ, Gandhidham and also do documentation work pertaining to import, export and DTA clearance of M/s. Aditya Exports. He also, stated that though his name does not appear on registration documents of M/s. Aditya Exports, he manages the operations of M/s. Aditya Exports*'.

This is confirmed in the findings of Inquiry report.

24.4. Para 2.3 of the SCN says that '*Shri Sudhakar Chikati, Kandla Branch Manager of M/s Aiyer Shipping Agency Pvt. Ltd in his statement dated 25.04.2023 tendered under Section 108 of the Customs Act,1962 stated that every time they contacted only 'Krishna Shipping and Allied Services' for goods imported by M/s. Aditya Exports at email id import@krishnashippingkdl.com. Shri Ankit Sharma too in declaration dated 28.04.2023 confirmed that they have received documents in relation to import of M/s. Aditya Exports from 'Krishna Shipping and Allied Services*'.

I/1834082/2024 This is confirmed in the findings of the Inquiry report.

24.5. Para 2.4 of the SCN states that '*Statement of Shri Vijay Sureshbhai Rathod, who is a salaried employee in M/s. 'Krishna Shipping and Allied Services' and works as an accountant for them, in his statement dated 24.04.2023 on being asked as to who looked after the work of Aditya Exports, stated that on the directions of Shri Pankaj Thakker, he looked after accounting work of Aditya Exports and made payments to CONFIDENTIAL from firm's account on direction of Shri Pankaj Thakker for expenses such as electricity bill charges, salary, GST payments, water charges etc*'.

This is confirmed in the findings of the Inquiry report.

24.6. Para 2.5 of the SCN states that '*the partners in M/s Aditya Exports, Shri Naimish Himatlal Sodha and Shri Mehul Pujara admitted in their statements dated 25.04.2023, that all Bills of Entry were filed by Krishna Shipping and Allied Services on order of Pankaj Thakker; that Pankaj Thakker dealt with the suppliers for import of various goods for M/s Aditya Exports and maintained all records in his office at Krishna Clearing Agency, Gandhidham; that he was not aware of either M/s Cuthbert Winner LLP or M/s Cuthbert Oceans LLP; that only Pankaj Thakker dealt with clients and he was being paid only the rent for warehousing and all the business was being done by Pankaj Thakker himself. Shri Naimish Himatlal Sodha also gave the statement along same lines*'.

This is confirmed in the findings of the Inquiry report.

24.7. Para 2.7 of the SCN states that '*During investigation, the bank account statements of M/s Krishna Shipping and Allied Services were procured from the banks and it has been found that the customs duty payments (IGST component) for DTA removal to M/s Cuthbert winner LLP and M/s cuthbert oceans LLP as well as container freight payments for transport of goods from Mundra to KASEZ were made by M/s Krishna Shipping and Allied Services, even though in terms of the Customs Act, 1962 read with SEZ Rules, 2006, the duty payments are required to be made by M/s cuthbert winner LLP and M/s Cuthbert oceans LLP*'.

This is confirmed by findings in the Inquiry report.

24.8. Further, I find that these statements made before DRI are not retracted nor was it so claimed.

24.9 In view of the same, I do not find any force in the submissions that allegation pertain to omission and commission of Shri Pankaj Thakker in his personal capacity and cannot be assigned to the conduct of the business activity of the CB.

25. I find that, basing on discussion of material referred therein, the Show

1/1834082/2024

Cause Notice has alleged contravention of the provisions of Regulations 10 (d), 10 (e), 10 (n) & 10 (q) read with Regulation 13 (12) 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.

26. I find that during the investigation of the case, statements of various concerned persons along with the CB employees with respect to the import of the consignment of Betel nut/ Areca nut and Black/ white pepper 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 *ASSTI. COLLR. OF C. EX., RAJAMUNDRY Versus DUNCAN AGRO INDUSTRIES LTD. 2000 (120) E.L.T. 280 (S.C.)*. I also find that these statements referred in the SCN support the allegations against Customs Broker, and are discussed below in terms of various provisions of CBLR, 2018 and referring to findings of Inquiry officer.

27. The subject case pertains to illegal clearance of Import consignment of Betel nut/Areca nut/ Black and white pepper, as the details in SCN would vouch for. Details of role of CB in this illegal clearances and their conduct in this case, as would be relevant to examine their compliance with CBLR 2018, are discussed in para 24 above and in paras below.

28. The first allegation leveled against the CB is for violation of Regulation 10 (d) of CBLR, 2018, 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 instance case, the CB has submitted fake and forged proof of export containing names and seals of non-existing officers of Customs. The said documents were dispatched in courier from Karad, Maharashtra which is not in the route between Assam and KASEZ. Kandla. I do not find any explanation to the fact are recast that correct details are kept hidden by the Customs Broker from Customs Authorities at KASEZ. I find that Customs Broker has attempted to hide the fraud of non-export of consignments by submitting these documents to KASEZ authorities and they have deliberately committed the offence and failed to bring the gross mis-declaration in export documents to the notice of the customs authorities. On the contrary, by submitting so called proof of export giving forged/fake signature/stamp of Customs officers to the KASEZ Customs Authorities, they deliberately abetted the fraudulent export. I find that the CB for

1/1834082/2024

His own vested interests had deliberately submitted the forged documents to Customs authorities. Thus, instead of bringing matter to the notice of department, the CB involved themselves in the illegal clearance of Betel nuts/ Black pepper etc. Inquiry Report dated 15.12.2023 has confirmed the contravention of said regulation by the CB. As there is no specific 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

29. Second allegation leveled against the CB is for violation of Regulation 10 (e) of CBLR,2018, 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. Customs Broker has made no attempt to seek any authorization from the companies regarding their representative Aman Verma. When the Customs Broker was not even indirect contact with the clients, they should not have filed Bills of Entry or Shipping Bills. The CB blindly obeyed and followed the instructions imparted by Shri Pankaj K. Thakker, partner of the CB and grossly failed to assess the correct details, description and nature of the goods. It is the responsibility of the CHA to find out and ascertain the correct details, description and nature of the goods in question and to ensure that the same have been correctly represented before the Customs. Further, CB is duty bound to make the true and correct declarations before the Customs authorities, but in this case CB have knowingly and deliberately mis-declared the material particulars of the subject goods. The findings of Inquiry Officer in para 30 of the report, extracted above, support the findings regarding the act of mis-declaration by the CB. Thus, CB has deliberately neglected 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. Inquiry Report has confirmed the contravention of said regulation by the CB. As there is no specific 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.

30. Third allegation leveled against the CB is for violation of Regulation 10 (n) of CBLR,2018, which states that:

*A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number*

I/1834082/2024

*(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 details were not physically verified to know the genuineness of the Importer by the CB. Shri Pankaj K. Thakker, Partner of the CB is the kingpin of the illegal clearance of the goods referred to in SCN. The details of M/s Cuthbert winner LLP and M/s cuthbert oceans LLP are not confirmed and they were found as nonexistent at the declared place. No details of the genuineness of the importers and shippers, and their verification are provided. Though being in contact with the key persons of UAE based companies viz. M/s Rakayez General Trading LLC, M/s Divine General Trading LLC, M/s. Technozone General Trading LLC etc., Shri Thakkar deliberately did not provide the correct and complete whereabouts of such key persons who were behind the entire gamut of huge amount of Duty evasion by fraudulent export. They have failed to verify the genuineness of the shipper and buyers, KYC documents and material particulars of import/export documents. It appeared that the CB has contravened the provisions of Regulation 10 (n) of CBLR, 2018. Inquiry Report has confirmed the contravention of said regulation by the CB. As there is no specific 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.

31. Fourth allegation leveled against the CB is for violation of Regulation 10 (q) of CBLR, 2018, which states that:

*Co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.*

In the instant case, allegation on the CB that they have not co-operated with the Customs officers. During the investigation, Statement of Shri Pankaj K. Thakkar and other key persons were recorded by the DRI officers which indicated that Shri Pankaj K. Thakkar was the actual person who used to handle and manage working including discussion with overseas shippers, arranging transportation and other operations in M/s. Aditya Exports. Shri Pankaj K. Thakkar, Partner of the CB during the investigation has not provided the details/ whereabouts of Shri Aman Verma, who was a freight forwarder/ broker in Dubai contacted him for warehousing of the Betel nut/ Areca nut and Black/ white pepper at the warehouse of M/s Aditya Exports for re-export purpose on behalf of all the Shipper/foreign suppliers. Shri Pankaj K. Thakkar did not verify the genuineness of shippers and though being in contact with the key persons of UAE based companies viz. M/s Rakayez General Trading LLC, M/s Divine General

1/1834082/2024

Trading LLC, M/s. Technozone General Trading LLC etc., he deliberately did not provide the correct and complete whereabouts of such key persons who were behind the entire gamut of huge amount of Duty evasion by fraudulent export. It is seen that the CB has contravened the provisions of Regulation 10(q) of CBLR, 2018. Inquiry Report has confirmed the contravention of said regulation by the CB. As there is no specific 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(q) of CBLR,2018.

32. In view of the above, I find that the allegation leveled against the CB in the Show Cause Notice dated 22.09.2023 for the contravention of provisions of Regulation 10(d), 10(e), 10(n), 10 (q) & 13(12) of CBLR, 2018 stand proved.

Accordingly, I pass the following order:

#### ORDER

(i) I revoke the Customs Broker Licence No. KDL/CHA/R/45/2011 (PAN No. AADFK8760C) issued to M/s. Krishna Shipping and Allied services under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with Regulation 17 of CBLR, 2018.

(ii) I also order for forfeiture of the whole security deposit furnished by the Customs Broker for issuance of CB License No. KDL/CHA/R/45/2011 (PAN No. AADFK8760C) under Regulation 14 of CBLR, 2018.

(iii) I also impose a Penalty of Rs. 50,000/- (Fifty Thousand Only) upon M/s Krishna Shipping and Allied services in terms of Regulation 18 of CBLR,2018).

(M. Rammohan Rao)  
Commissioner  
Customs House, Kandla

**DIN: 20240371ML0000555D9E**

To  
M/s Krishna Shipping and Allied Services,  
Office No. 53/54-A, Transport Nagar,  
NH-8, Gandhidham-370201, Kutch, Gujarat

I/1834082/2024

**Copy to:-**

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