



प्रधान सीमाशुल्क आयुक्त (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टम ब्रोकरअनुभाग, नवीन सीमाशुल्क भवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्ड इस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/151/2024/CBS

Order date: 17.04.2024

Issue date: 18.04.2024

DIN: 20240477000000333F1D

ORDER NO. 06 /2024-25

M/s Pratik International (Licence No. 11/1988, CB Code AAPFP3036J CH001), 131, Almedia House, Room No. 01, Road No. 02, Church Pakhadi, Sahar Village, Andheri East, Mumbai-400099 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1988, issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence Report in the form of Investigation Report dated 15.03.2024 issued vide F. No. SG/MISC-160/2023-24 CIU, JNCH was received from CIU, JNCH, Mumbai-II, wherein, inter-alia following were informed:

2.1 The Officers of CIU, JNCH held two Forty Feet (40') containers nos. ARCU4534860 & ARCU4534475 in M/s. Central Warehousing Corporation CFS, D'Node, Dronagiri containing 4158 CTNs of imported "**Fresh Pear Fruit**" of net weight 49896.0 Kgs covered under RMS Facilitated Bill of Entry No. 9192378 dated 12.12.2023, imported by importer M/s. Abhi Agro Fresh Fruits (IEC:- BOWPD1234G) (hereinafter referred to as Importer) through their Customs Broker M/s. Pratik International (11/1988) by misusing the Phyto-sanitary Certificate No. NPPO- ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa.

2.2 During 100% examination of both Containers under Panchanama dated 19.12.2023 it was found that the description and quantity of the goods were found to be same as declared by the importer. However, Phyto-sanitary Certificate for Re-Export No. DXB-APH-02415-2460883 dated 05.12.2023 issued in UAE was uploaded in E-Sanchit for clearance of Fresh Pear Fruits. After scrutiny of the Phyto-sanitary Certificate it was found that PC No. NPPO- ZA/2023/10/1049905 dated 03.10.2023 was issued in South Africa (as declared country of origin), for export from South Africa to UAE, has been issued for a quantity of 13770 Cartons & 168830 NETT KGM of Fresh Pear Fruit.

2.3 Furthermore, after scrutiny of past consignments of **Fresh Pear Fruit** imported by the said importer for a period from 03.10.2023 to 26.12.2023, it was found that Phyto-sanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 was issued in South Africa (as declared country of origin) and multiple Phyto-sanitary Certificates were issued in UAE which were utilized by the said importer for multiple re-export shipments from UAE to Nhava Sheva.

2.4 It appears that the said importer had Misused “Country of Origin” Phyto-sanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 and had fraudulently imported 05 consignments of **Fresh Pear Fruit**, including the live consignment, having total Assessable Value of Rs. 2,20,77,346/-.

2.5 Further, Phyto-sanitary Certificate for Re-Export No. DXB-APH-02415-2460883 dated 05.12.2023 issued in UAE against PC No. NPPO-ZA/2023/10/1049905 issued in South Africa was used by the importer does not validate clearance of Fresh Pear Fruit imported vide Bill of Entry No. 9192378 dated 12.12.2023 and the same appeared to be misused for fraudulent Customs Clearances by misleading the Customs Authorities. Hence, it appears that the said 05 import consignments of Fresh Pear fruit, including the live consignment under seizure, have been imported without a valid mandatory Phyto-sanitary Certificate, subsequently, putting the Indian flora & fauna at risk. It was also found that PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa, in light of the Plant Quarantine (Regulation of Import into India) Order, 2003; did not contain the additional declarations and special conditions mentioned under Chapter-II & III and Schedule-VI of the said PQ order, 2003.

2.6 During the course of investigation, the Officers of CIU, JNCH seized the imported consignment of Fresh Pear Fruit covered under Bill of Entry No. 9192378 dated 12.12.2023, vide seizure Memo dated 26.12.2023 u/s 110 of the Customs Act 1962.

2.7 As per the PQ (Regulation of Import into India) Order, 2003, every import of Fresh Fruits (Pear and Apple) into India shall be accompanied by an original Phyto-sanitary Certificate, containing the additional declarations and special conditions, issued by an authorized officer in the country of origin.

Also, in case of re-export into India, the consignments shall be accompanied by a Phyto-sanitary certificate of re-exporting country along with the original/certified copy of Phyto-sanitary certificate issued by the country of origin.

2.8 In view of the above, all the import consignments of **Fresh Pear Fruit** made by the said importer since 03.10.2023 were taken up for investigation by CIU,

JNCH. As per data retrieved from ICES 1.5 System, it was found that the Importer had filed 14 Bills of Entry of **Fresh Pear Fruit**.

2.9 In light of the above, it is submitted that both the mandatory Phyto-sanitary Certificates issued by the re-exporting country and country of origin were either not uploaded or only one of the said Phyto-sanitary Certificates was uploaded in e-sanchit. Further, most of the import consignments imported by the said importer were re-exported consignments from UAE to Nhava-Sheva wherein, Phyto-sanitary Certificates issued by the re-exporting country (UAE) had been uploaded in e-sanchit but the mandatory Phyto-sanitary Certificates issued by the country of origin (South Africa) as mentioned in the said Phyto-sanitary Certificates issued by the re-exporting country (UAE), had not been uploaded in e-sanchit.

2.10 Furthermore, letters dated 13.01.2024 & 16.01.2024 were issued by the Office of the Commissioner of Customs, Gen, CIU, JNCH to the Pr. Commissioner of Customs (Prev.), Lucknow and the Pr. Commissioner of CGST, Meerut requesting for conducting search of the importer's Premises & recording of their statement w.r.t fraudulent imports of Fresh Fruits at, JNCH, Nhava Sheva. Search was conducted by a team of Officers of Customs (Prev.) Division, Bareilly along with the Officers of CGST Meerut at the Premises of the said importer at Shop No. 3, Sai Udyam, Rohta Road, Udyam Turupati Enclave, Meerut-250001, Uttar Pradesh under panchanama dated 16.01.2024. During search operation the said premises of the importer was found vacant, and nothing was found there except a few financial records and Phyto-sanitary Certificates. Shri Jaineesh Dubey, owner/proprietor of the said importer was not present during the search and the search was conducted in the presence of Shri Vikas Sharma (friend of Shri Jaineesh Dubey). Also, on asking about the 05 import consignments of Fresh Pear Fruit (which have been imported without valid mandatory Phyto-sanitary Certificates) through telephonic conversation with Shri Jaineesh Dubey, he said that he was ignorant of the fact, and they will communicate later with the help of their Chartered Accountant.

2.11 Therefore, all the said 14 imported consignments of Fresh Pear Fruit, during the period from October-2023 to December-2023 appears to be imported in violation of "**pre-import condition**" set by the said PQ Order, 2003, thereby, making them prohibited goods for import into India. This involved 1137.23 Tons of Pears valued at Rs. 6.43 crores involving Customs Duty of Rs. 2.12 crores.

2.12 Statement of Shri Devendra Ramchandra Salvi, Employee of CB M/s. Pratik International, in connection with import of Fresh Pear Fruit by the said Importer covered under Bill of Entry No. 9192378 dated 12.12.2023 was

recorded on 05.01.2024 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

He was an employee of M/s. Pratik International CB No. (11/1988) having Customs G Pass Kardex No. 5924/2022; was looking after all the Customs related work of M/s. Pratik International at JNCH; Mr. Ram Krishna Shetty was the F-Card holder and owner of his CB firm. He further stated that BE No. 9192378 dated 12.12.2023 was filed by his CB firm on behalf of the said Importer after proper authorization; he stated that importer had provided respective Phyto-sanitary Certificates for re-export issued in UAE in respect of three past import consignments and one live consignment of "Fresh Pear Fruit" and the same were uploaded in e-sanchit in 1.5 ICES System in which only PC No. NPPO-ZA/2023/10/1049905 & Country of Origin "South Africa" and quantity of individual import shipment from UAE was mentioned. He further stated that imports of "Fresh Pear Fruit" were made by using Phyto-sanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 which was issued in South Africa; he stated that his CB firm had not enquired the same from the said importer. He further stated that he accepted the mistake of his CB firm for not doing the proper KYC verification of the said importer and proper documentation in respect of imported goods i.e. Fresh Pear Fruits; he stated that as per available records in his office 09 import consignments of Fresh Pear Fruits including the live consignments pertaining to the said importer were filed by his CB firm during the period from 01.04.2023 to 05.01.2024. He further stated that due to some technical issues Phytosanitary Certificates of 05 past import consignments of the said importer had not been uploaded in e-sanchit in 1.5 ICES System; he stated that COO Certificate in respect of 09 imported consignments of Fresh Pear Fruits of the importer filed by his CB Firm M/s. Pratik International CB No. (11/1988) was not readily available with him and the same would be submitted in a week time.

3. In view of the above facts and findings, it appears that the CB M/s. Pratik International (11/1988) had not done proper KYC verification of the importer M/s. Abhi Agro Fresh Fruits. Further, they did not verify the import documents viz. packing list, COO, Phyto-sanitary Certificates, other relevant documents etc. and were in collusion with the importer in obtaining fraudulently Customs Clearances of "Fresh Pear Fruits". CB never advised the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and CB did not upload Phyto-sanitary Certificates in e-sanchit in ICES 1.5 System.

4. In view of the above, it appears that the CB M/s Pratik International. (11/1988), Mumbai, has failed to comply with the following regulations of the Customs Brokers Licensing Regulations 2018: -

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

In the instant case, the Customs Broker did not produce any evidence to prove that he obtained authorization from importer. It is also clear that CB was never in touch with importer by any means of communication or contact which indicates that the CB filed the bills of entry without taking proper authorisation from importer/IEC holder and did not verify the genuineness of the importer. Since the authorisation was not produced by the CB, it is concluded that CB had never taken pains to obtain proper authorisation from importer with mala-fide intention. Hence, the said CB appears to have violated regulation 10(a) of CBLR, 2018.

10(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;”

In the instant case, the Customs Broker did not advise the importer about PQ (Regulation of Import into India) Order, 2003 and failed to advise the importer to comply with the provision of the Customs Act, other allied Acts and the rules and regulations nor did they bring the matter to the notice of the customs authorities which is sheer non-compliance at the end of Customs broker. The CB failed to instruct the importer to get the valid mandatory Phyto-sanitary Certificates, subsequently, putting the Indian flora & fauna at risk. Hence, the said CB appears to have violated regulation 10(d) of CBLR, 2018.

10(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;

In the instant case, the CB did not exercise their duties to ascertain mandatory Phyto-sanitary Certificate submitted was genuine or not whether there was misuse of any notification, circular, public notice or not which subsequently, putting the Indian flora & fauna at risk. They also failed to ascertain the correctness of the documents of the Country of Origin along with Phyto-Sanitary Certificate and advise the importer properly. It appears that the CB had tacitly connived with the importer by using wrong Phyto-sanitary Certificate to evade payment of due Customs duty. Hence, the said CB appears to have violated regulation 10(e) of CBLR, 2018.

10(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

In the instant case, it appears that the said CB did not discharge their duties with utmost speed and efficiency and without delay; had the CB informed about the wrong mandatory Phyto-sanitary Certificate to the importer, the fraudulent import and loss to government exchequer could have been averted. Hence, the said CB appears to have violated regulation 10(m) of CBLR, 2018.

10(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;*

In the instant case, it appears that the said CB did not contact with importer directly or indirectly and failed to verify the address of IEC holder and filed the bill of entry without proper verification of the address, identity, functioning and credential of the importer. During search operation, the premises of the importer was found vacant, and nothing was found there except a few financial records and Phyto-sanitary Certificates. The importer did not appear during the search. Hence, the said CB appears to have violated regulation 10(n) of CBLR, 2018.

5. The CB representative in his statement had accepted the mistake of the Customs Broker for not doing proper KYC verification of the said importer and not doing proper documentation in respect of imported goods i.e. Fresh Pear Fruits. It was responsibility of the CB to upload/e-sanchit valid mandatory Phyto-sanitary Certificate for import of Fresh Pear Fruits in India, with the correct Country of Origin. Such serious lapses by the CB have put the Indian flora & fauna at risk as per the PQ (Regulation of Import into India) Order, 2003. The Customs Broker appears to have intentionally uploaded non-relevant documents to aid the illegal imports by the said importer.

6. From the above facts it appeared that, prima facie, Customs Broker M/s. Pratik International (11/1988) had violated Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018.

In view of the above facts, the CB License held by Customs Broker M/s. Pratik International (11/1988) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 55/2023-24 dated 27.03.2024 and personal hearing was granted to the CB on 10.04.2024 at 12.30 noon.

7. WRITTEN SUBMISSION OF THE CB:- In response to the said Suspension Order, CB M/s. Pratik International (11/1988) submitted their written reply on 08.04.2024. In the said submission:

- i) CB submitted that they obtained authorisation from the importer.
- ii) CB submitted that the importer is a DPD client and a regular importer of 'Fresh Fruits'; was well aware of the documents required and was

- informed about the requisite documents which were provided by the importer. CB submitted that they filed Bills of Entry on receipt of Import Invoice, packing list and Bill of lading and other documents from the importer and the same were uploaded in Bills of Entry. Phyto-sanitary Certificates of Origin provided by the importer were produced at the time of clearance but inadvertently the same was not uploaded in e-Sanchit. CB submitted that Plant Quarantine was waived by RMS system, there was no requirement for obtaining Plant Quarantine NOC.
- iii) CB submitted that no incorrect information was communicated to the importer and, there is no allegation by the importer that the CB imparted him incorrect information. CB submitted that they verified Phyto- sanitary certificates by scanning QR-code.
 - iv) CB submitted that there was no delay or speed and efficiency related issue with respect to the consignments in question, therefore, the violation of Regulation 10(m) of the CBLR, 2018 is not based on facts and evidence. Also, there is no complaint regarding speed, efficiency, and delay in respect of the subject consignment.
 - v) CB submitted that they verified KYC documents like Aadhar No., IEC, GSTIN etc submitted by the importer on DGFT, GST and other Government portals. CB submitted that during search operation financial documents and Phyto- sanitary certificate were recovered in the declared premises. The non-availability of the importer at the time of search is attributed to the element of surprise in searches conducted. The importer responded to the summons and co-operated in the investigation.
 - vi) CB submitted that as far as acceptance by the CB representative of not doing proper KYC verification in respect of the importer is concerned, in this connection, it is to submit that as a copy of the statement recorded was not provided to the CB, the allegation has come to known by the captioned order, and had it been known earlier, the same would have been refuted and replied aptly.
 - vii) CB submitted that the Bills of Entry were filed based on the documents provided by the importer and QR-code verification of the Phyto-sanitary certificate of origin provided was done at their end. In respect of use of Phyto-sanitary certificate issued by the country of origin i.e. 'South Africa', it is to submit that the same only came to notice when the investigation started and the same was pointed out.
 - viii) CB submitted that the investigation initiated by CIU, JNCH culminated in issuance of Order-In- Original No. 1557(L)/2023-24/ADC/NS-I/Gr. 1 & 1A/CAC/INCH dated 02.02.2024 issued by ADC, Gr. 1 & 1A, JNCH, Nhava Sheva, wherein though subject goods have been

confiscated and redemption fine and penalty have been imposed on the importer. No violation on the part of the CB has been reported.

- ix) CB further submitted that their CB firm has worked within the legal framework and requested to revoke the suspension considering the bread and butter of persons employed in the CB firm. CB submitted that any procedural lapse may have happened due to inadvertent error or oversight but the same was not intentional, also, the procedural lapse did not cause any revenue loss to the Government in the instant case. They again requested to revoke the suspension and assured their CB firm will co-operate with the investigation.

8. RECORD OF PERSONAL HEARING OF THE CB:- In pursuance to regulation 16(2) of the CBLR, 2018, opportunity of personal hearing was granted to the CB M/s. Pratik International (11/1988), CB's Partner: Mr. Mahalinga M. Poojary, Devendra Salve (G-card Employee) and Pavithran Kudroli (Employee) appeared for PH on 10.04.2024. They reiterated their written submission submitted vide letter dated 08.04.2024.

DISCUSSION AND FINDINGS

9.1 I have carefully gone through the records of the case, the written submissions of the Customs Broker and the submissions made during the personal hearing. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

9.2 The issues to be decided in the instant case is whether the suspension Order No. 55/2023-24 dated 27.03.2024 is required to be continued or revoked.

9.3. I observe that the CB has taken a plea that the importer was a DPD client and a regular importer of fresh fruits therefore was well verse with the documents required. However, I observe that under the CBLR 2018, the CB is duty bound to advise their client on the documentary requirements for the import and export of goods. In the instant case, the CB did not advise the importer for having proper Phyto-Sanitary Certificate as required for importing Fresh Pear Fruits. Further, they even failed to ascertain correctness of the Certificate of Country of Origin which is mandatory document for such imports. Thus, putting the Indian Flora & Fauna at risk. I also observe that Shri Devendra Ramchandra Salvi, G Card holder of the CB firm, in his statement recorded on dated 05.01.2024 had accepted that CB did not verify proper KYC of the importer and they filed Bills of Entry based on the documents provided by the importer. Thus, it appears that the CB has worked in very negligent manner and by their such act they risked the flora and fauna of the country.

9.4 I observe that the CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded. In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of Commissioner of Customs Vs M/s K.M. Ganatra & Co *has held that:* -

“the Customs House Agent (CHA) occupies a very important position in the customs house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies namely carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through its agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies...”

9.5 Further, I rely on the judgement of the Hon'ble High Court of Madras in case of Cappithan Agencies vs. Commissioner of Customs, Chennai-VIII, 2015 (326) E.L.T. 150 (Mad.), has held that:

“...Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such a position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.”

9.6 In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 55/2023-24 dated 27.03.2024 under regulation 16 of the CBLR,2018 was just and proper. The said regulation reads as: -

“16. 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.”

10. From the above facts, prima-facie, the Customs Broker M/s. Pratik International (11/1988) appeared to have failed to fulfil their obligations under Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, CB appears to be liable and guilty.

Accordingly, I pass the following order: -

ORDER

- I. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (2) of CBLR, 2018 order that the suspension CB licence of M/s. Pratik International (11/1988) ordered vide Suspension Order No. 55/2023-24 dated 27.03.2024 shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018.
- II. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.

17/4/2024
(SUNIL JAIN)

**Principal Commissioner of Customs (G)
NCH, Mumbai - I**

To,
M/s. M/s. Pratik International (CB No. 11/1988),
131, Almedia House, Room No. 01, Road No. 02,
Church Pakhadi, Sahar Village, Andheri East,
Mumbai-400099.

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai Zone I, II, III
2. CIU's of NCH, ACC & JNCH
3. The Commissioner of Customs, Mumbai Zone I, II, III.
4. EDI of NCH, ACC & JNCH
5. Bombay Custom House Agent Association
6. Office copy
7. Notice Board.