



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

F. No. GEN/CB/398/2023 CBS

Date: 17.04.2024

DIN: 20240477000000006277

ORDER NO. 05/2024-25

M/S. World wind Shipping Services (Licence No. 11/1717), CB Code AIPB4243LCH001), 26 Balaji Tower, Sector 30A Vashi Navi Mumbai, District-Thane, Pin code- 400705, State- Maharashtra (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. (11/1717), issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. The instant case originated on the basis of offence received from SIIB(I) ACC, Mumbai vide F.No. No. CIU/Inv-03/2018-19/ACC dated 10.07.2023. On the basis of intelligence gathered by CIU, ACC it was found that M/s Moving Collection (IEC-13VHPK3349B) (hereinafter referred to as "the importer") imported consignments of Ready-Made Garments and appeared to have mis-declared the goods, imported vide Bill of Entry No. 8004724 dated 11.09.2018 in terms of description, value & quantity having a bearing on duty through their CHA, M/s World wind Shipping Services, having Custom Broker License No. (11/1717).

3. During the course of examination dated 14.09.2018, CIU, Mumbai Zone III found some of the items which were not declared by the importer at the time of filing the Bill of Entry (Table-I).

Table-I

M/s Moving collection B/E No. 8004724 dt 11.09.2018				
	Name of the Item declared	Quantity	Name of the Item found on examination	Quantity found
1	Ladies Skirt	254	Ladies Skirt	283
			Ladies Short Skirt	15
2	Ladies Tops	6890	Ladies Tops Woven	2231
			Ladies Tops Knitted	3917
3	Ladies Dress	767	Ladies Dress	605
4	Ladies Jeggings	196	Ladies Jeggings	170
5	Ladies Shrugs	631	Ladies Shrugs	277
6	-	0	Ladies Pullover with Headphone	135

7	-	0	Ladies full sleeve padde jacket with hody	135
8	-		Ladies Pants	33
9	-	0	Ladies Pants Pullover	333
10	-	0	Ladies stole(Scarf)	190
11	-	0	Denim Top	70
12	-	0	Denim Jacket with hody	20
13	-	0	Ladies overcoat	24
	Total quantiy declared	8738	Total quantiy	8438

4. The examination revealed that 50% of the goods were not declared or wrongly classified to evade customs duty. The goods were re-examined by the Appraising Gr. III, which revealed that re-determined assessable value was Rs. 12,46,421/- whereas the declared value was Rs 10,02,428/- and total re-determined duty was Rs 774151/- whereas duty paid at the time of filing B/E was Rs 3,41,519/-.

5. The officers from CIU, Mumbai Zone III verified the address of the importer Shri Uttam Kisan Katarnavare, in whose name IEC was issued. At the time of visit he said that he had not applied for issuance of IEC. This fact, prima facie confirmed that the addresses mentioned in the IEC was in existence but no such firm existed at the given address.

6. Statement of Shri Uttam Kisan Katarnavare, aged 51, who was staying at the declared address, was recorded on 18.09.2018, in which he inter alia stated that:

- I. He is a retired Western Railway employee;
- II. He had never applied to DGFT or requested anybody to apply on his behalf for issuance of IEC in his name or in the name of any company;
- III. He has not placed any order for import of any item till date and hence not paid for import or sale of such items;
- IV. He is not even remotely related to such transactions and if somebody doing anything in his name then it is wrong.

7. Thereafter CIU ACC received a letter, which was written in Marathi language, dated 19.09.2018 from Shri Uttam Katarnavare, which was addressed to the Commissioner of Customs (General) and (Imports), ACC, Mumbai, the translated version of the letter is reproduced herein-below for ready reference:

" I, Uttam Katarnavare, Proprietor of Moving Collection, wish to inform that yesterday (18th September, 2018) I was called on a short notice for recording a statement in Customs CIU Department. Since I was not conversant with the Customs Procedures, I out of fear gave a wrong statement but I want to inform that the work related to my imports is handled by Shri Tushar Pedenekar from M/s Worldwind Shipping Services and that I am aware that Ladies Readymade Garments have been imported.

I am not fully conversant with the Customs and Import procedures and because I was brought on a short notice, I could not contact Shri Tushar

Pedenekar and as a result I gave an incorrect statement for which I am very sorry and shall not repeat the mistake.

All my Customs and Import related work is handled by Shri Tushar Pedenekar and that Shri Tushar Pedekar had handled and shall handle my work in future as well and if any inquiry related to Customs work is to be done then the same may please be confirmed from Shri Pedenekar.”

Since Shri Uttam Katarnavare in his statement dated 15.03.2021 had denied his signature on authority letter dated 08.04.2018, therefore original documents i.e. authority letter dated 08.04.2018 and letter dated 19.09.2018 for changing of statement had been forwarded to CFSL, Pune to determine the authenticity of handwritten signatures. As per the CFSL, Pune report dated 16.02.2023 , "The enclosed signatures stamped and marked X-1 to X-9 all were written by one the same person". This means that signatures on the said documents were made by the IEC holder Sh. Uttam Katarnavare. However, during investigation it appeared that Shri Tushar Pedenekar had placed order for import and he had paid customs duty or other charges

8. Statement of Shri Tushar Dinanath Pedenekar, employee of the CB handled the above consignment of RMG was recorded on 19.09.2018 wherein he inter alia stated that:

- I. He had handled clearance of the consignment imported in the name of the importer covered under Bill of Entry No. 8004724 dated 11.09.2018;
- II. The orders were placed by him;
- III. The import documents in the subject BE were received by him directly from the supplier M/S. Guangdong Sky Ocean Logistics Company Limited, Guangzhou, China and the documents received included Air Way Bill, Invoice and Packing List;
- IV. Authority letter from the IEC holder was not received at the time of receipt of the import documents but had initially been handed over after duly signed by the Prop. of the importing firm;
- V. His office had handled 27 consignments, including the present consignment, of Readymade Garments on behalf of the importer. He handed over a table indicating the list of B/E handled by his company on behalf of the importer duly signed by him with date;
- VI. The information had always been given by him to his office about the import consignments handled in the name of CB firm;
- VII. None of the payments against the 27 consignments had so far been made by him or by the importing company. But payments would be made by him to the overseas companies as soon as payments would be received from the retails shops;
- VIII. Duty against the above 27 imports had been paid online by him from the loan obtained from friends but amount was paid from different accounts held in the name of different persons;
- IX. After Customs clearance, vehicle was used to be arranged by him and the goods under import were dispatched to the retail shops.
- X. He did not have the information about the addresses to which the goods were dispatched;
- XI. The payment for the arranged vehicle was used to be made by him at the time of booking the vehicle for dispatch;
- XII. The Customs Broker agency charges were paid by him to the Customs Broker, Worldwind Shipping Services, whenever any consignment was handled by him in the name of the importer;

- XIII. The owner of the CB firm for which he worked was not aware of the fact that he was importing directly from the overseas companies in the name of proxy IEC;
- XIV. The IEC holder was not aware of the fact that RMGs were imported in the name of the firm, M/S. Moving Collection but was certainly been informed about the fact that imports will be made against the said firm, M/S. Moving Collection.

9. Statement of Shri Thomas Bose, the Proprietor of the Custom Broker M/S Worldwind Shipping Service was recorded on 30.03.2021 wherein he inter alia stated that:

- I. The said Bill of Entry was filed by M/S Worldwind Shipping Services on behalf of the importer M/S Moving Collection;
- II. The clearance from Customs of these items were being looked after by Shri Tushar Pedenekar, H-Card holder in the Customs Broker;
- III. After some problems with Customs Department in ACC, Sahar, Andheri (East), Mumbai-400 099, he discontinued his service from his office;
- IV. Shri Tushar Pedenekar had brought some importers namely M/S. Parle G, Khushyant Medicals, Moving Collection, and City Cloths;
- V. He had verified KYC details, authority letter, bank signature, AD code letter, PAN Card, GST and IEC copy of the importer through their employee Shri Tushar Pedenekar;
- VI. Agency payment of Rs. 3500/- per consignment was made in cash, these payments were not reflected in their books in any manner, these payments were spent for office expenses and maintenance;
- VII. Their company has handled around 27 consignments (since 12.04.2018) including the present consignment of the firm under investigation.

10. CIU JNCH received a letter dated 17.09.2018 from Sh. Pendekar wherein he stated that he has not done any thing wrong, hence consignment may be released to him, Goods were released to him vide letter dated 01.10.2018 on paying PP Bond and security deposit, again PP Bond and security deposit was not paid from the accounts of the importer.

11. During investigation the bank accounts of the importer and Sh. Pendekar were searched which reveled that the goods were imported and sold by Sh. Pedenekar himself and before the current consignment Sh. Pendekar had allready cleared 26 consignments having declared assessable value of RS 2,67,30,737/-.

12. The license of CB, Worldwind Shipping Services. (Licence no. 11/1717, CB code code AIIPB4243LCH001) was suspended vide Order No. 01/2024-25 dated 01.03.2024 for violation of Regulations 10(d), 10(n), 10(p) & 13(12) of CBLR, 2018.

13. Now, as per Regulation 16(2) of CBLR, 2018, the case has come up for passing order as deemed fit either for revoking the suspension or continuing the same. Hence, the CB was given opportunity of personal hearing in this matter on 10.04.2024.

**RECORDS OF PERSONAL HEARING & WRITTEN SUBMISSIONS OF THE
CB**

14. Shri N.D. George , Advocate for the CB, appeared for the personal hearing before me on 10.04.2024 and made the written submission and reiterated the same, as detailed below:

14.1. As per the said examination report it was found that the total quantity declared was 8738 Pcs and on examinations it was found to be 8438 Pcs. i.e. lesser quantity.

14.2. The officers of CIU have re-determined the value of the goods as Rs. 12,46,421/- whereas the declared value was Rs. 10,02,428/-. On perusal of the said order it is found that there are no findings as to how the value was re-determined as there is no market inquiry nor has the value been re- determined as per Customs Valuations Rules,2007.

That being so the value re-determined is not the true and correct value. Therefore, the transaction value has to be accepted,

14.3. The noticee further say and submit that the Bill of Entry was filed on 11.09.2018 and the goods were examined on 14.09.2018 and the statements were recorded on 18.09.2018 and 19.09.2018 respectively. The CB license was suspended on 01 .04.2024 i.e. after 5 years and 6 months approx. Therefore, there was no immediate reasons to suspend the license. In this context we rely on the following case laws:

- i. Commissioner of Customs, Coimbatore versus Sindhu Cargo Services Ltd reported in 2007 (219) EL. T, 87 (Mad.)
- ii. Venus Shipping Agencies versus Commissioner of Customs, Chennai reported on 2009 (237) EL. T. 549 (Tri. - Chennai).
- iii. Ratnadip Shipping Pvt. Ltd Versus Commr. Of Cus. (General), Mumbai Reported 2019 (370) E.L.T. 1765 (Tri. - Mumbai)
- iv. M.K, Saha & Company Versus Commissioner of Customs (Airport & Administration), Kolkata reported in 2021 (376) EL. T. 534 (Tri. - Kolkata)
- v. Darowala Bros And Company versus Commissioner of Customs (General), Mumbai Reported In 2023 (383) E.L.T. 445 (Tri. - Mumbai) / (2023) 2 Centax 140 (Tri.-Bom) / (2023) 2 Centax 140 (Tri. - Mumbai),

14.4 Firstly, the SCN is barred by limitation as the Bill of Entry pertains to the year 2018 and the order of suspension has been issued on 01.04.2024 which is after a period of 5 years 6 months. Therefore, the said order is illegal and bad in law not maintainable and liable to be withdrawn.

14.5. The statements of the importer and the CB and his employee were recorded under Section 108 of the Customs Act, 1962., and the same is exculpatory in nature.

14.6. In so far as the charge of violation of regulations 10(d) (n) (p) and 13(12) of CBLR, 2018 is concerned the CB makes the following submissions.

The CB says and submits that the Bill of Entry was filed as per the documents given by the importer. Further, the document given by the importer is deemed to be correct and genuine as the same has been accepted by the officer at the time of assessment. It is after an investigation / examination by the CIU the department has alleged under valuation and mis-declaration.

The CB has appeared before the CIU and furnished the relevant KYC documents. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

We also rely in the case of Jaiswal Import Cargo Services Ltd versus Commissioner of Customs., New Delhi reported in 2019 (370) E.L.T.1366 (Tri. - Del.)

In so far as article of charge 10(n) is concerned the CB has done due diligence before the filing of the Shipping Bill. The CB has verified the IEC and complied with the KYC norm before filing of Shipping Bill. This fact is recorded in the statement recorded under Section 108 of the Customs Act, 1962. Therefore, the charge against the CB deserves to be set aside.

In this context we rely on the judgment in the case of Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T. 1074 (Tri. - Del.)

The CB has been maintaining all the records and books of account diligently during the past 5 years as per CBLR, 2018. A copy of the ITR and FromGSTR-3B is enclosed here to as Annexure-I.

The CB submits that the employee of the CB is a H Card holder issued by the Customs department and has been employed since 2017. Further it is not an offence to receive Rs. 3,500/- the agency charges in cash as the same is reflected in the books of accounts. [We crave leave to refer to and rely upon the Bills when produced]

14.7 It is further submitted that there are no modus operandi by the CB in rendering their service and since 2018 the CB has been operative with any adverse observations.

14.8 In the circumstances, the order is unsustainable in law and the suspension of the CB license liable to be withdrawn.

DISCUSSIONS & FINDINGS

15. I have carefully gone through the offence received from SIIB(I) ACC, Mumbai vide F.No. No. CIU/Inv-03/2018-19/ACC dated 10.07.2023, the suspension order no. 01/2024-25 dated 01.04.2024 of the CB licence and the written and oral submission of the CB made at the time of personal hearing. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

15.1. The issues to be decided in the instant case is whether the suspension Order No. 01/2024-25 dated 01.04.2024 is required to be continued or revoked.

15.2 I have carefully perused written and oral submission made by the CB wherein they have cited various facts to substantiate that suspension of license is not warranted in the subject case.

15.3. I observe that the role of the CB is very important in customs clearance and they are a bridge between the customs and the importer/exporter. During investigation it was found that goods were mis-declared in terms of classification, quantity and value, 50% of the goods were not declared or wrongly classified to evade customs duty. The goods were re-examined by the Appraising Gr. III, which revealed that re-determined assessable value was Rs 12,46,421/- whereas the declared value was Rs 10,02,428/- and total re-determined duty was Rs 774151/- whereas duty paid at the time of filing B/E was Rs 3,41,519/-.

15.4. During the visit of the CIU officers at the declared address IEC holder Shri Uttam Kisan Katarnavare it was confirmed that the addresses mentioned in the IEC was in existence but no such firm existed at the given address. During investigation it was found that the goods were imported by the employee of the CB and not the IEC holder himself. Shri Thomas Bose, Proprietor of M/S. Worldwind Shipping Services has accepted in his statement recorded on 30.03.2021 that the agency payment of Rs 3500/- were paid in cash to them and the same was not reflected in their account books in any manner. The customs broker has grossly failed to supervise his employee Shri Tushar Pedenekar to properly conduct as per CBLR 2018. The CB failed to supervise his employee regarding proper address verification. Further total 27 B/Es have been processed by Shri Tushar Pedenekar the employee of the CB on behalf of the proxy importer, and the CB was completely ignorant of the said fact. This fact seems to be enough to prove that the CB has failed to supervise his employee, who was misusing the third party IEC and also in employment of of the CB as 'H' card holder .

15.5 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..."

15.6 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.”

15.7 In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 54/2023-24 dated 26.03.2024 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.”

15.8 From the above facts, prima-facie, the C B appeared to have failed to fulfil their obligations under Regulation 10(d) (n) (p) and 13(12) 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. 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 of the Customs Broker Licence of CB ordered vide Order no. 01/2024-25 dated 01.04.2024 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 or purported to 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.


(SUNIL JAIN)

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

To,

M/s. Worldwind Shipping Services (Licence no. 11/1717), CB Code AIIPB4243LCH001), 26 Balaji Tower, Sector 30A Vashi Navi Mumbai, District-Thane, Pin code- 400705, State- Maharashtra.

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.