



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्डइस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/87/2024-CBS

Date: 02.04.2024

DIN: 20240477 00000000 f3fD


ORDER No. 01 /2024-25
UNDER REGULATION 16 OF THE CUSTOMS BROKER LICENSING
REGULATION, 2018

M/s. Charania Associates (CB code AACFC6060ECH001), having registered address at 1/12, Baitul Rehmat Building, Navroji Hill Road No. 19, Dongri, Mumbai - 400 009 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/950, 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. The license No. 11/950 held by M/s. Charania Associates having lifetime validity.

2. On receipt of specific information, the export consignments of Ready-Made Garments (RMG) declared as "Cotton Mens T-Shirt" by M/s Aura Multitrade (IEC-ADMPN7657B), attempted to be exported vide Shipping Bill No. 8089498 dated 22.01.2021 and 8102774 dated 23.01.2021 filed by CHA M/s Ghanshyam Patel Freight Forwarders Pvt. Ltd. were put on hold for examination by SIIB(Export), ACC. The declared FOB value of the goods was Rs. 65,21,619/- and claimed drawback benefit was Rs. 1,36,162.74/- for both Shipping Bills.

2.1 Consequently, the subject goods pertaining to above said Shipping Bills were examined under Panchnama dated 25.01.2021. During the examination, quantity and description of the goods were not found as declared in Shipping Bill No. 8102774 dated 23.01.2021. Further, the goods pertaining to both the Shipping Bills looked to be substandard and were not in conformity with the value declared by the exporter. Representative samples were drawn and sealed for the purpose of testing and market enquiry.

2.2 Past export data was retrieved from ICES and it was learnt that the exporter had started exporting consignments under drawback scheme from September-2020 and had claimed total drawback amount of Rs.35.87 Lakhs in 65 Shipping Bills till date. The drawback amount of Rs.34,18,755/- had already

been disbursed to M/s. Aura Multitrade through main scroll generated between the period 01.09.2020 to 31.03.2021. 

2.3 From the data retrieved from ICES for the shipping Bill filed, Drawback and BRC, it was found that the exporter had filed total 65 Shipping Bills with declared FOB value of Rs. 2221.52 Lakhs and had claimed total Drawback amount of Rs.35.87 Lakhs, ROSCTL amount of Rs. 13,52,274/- and RODTEP amount of Rs. 6,58,284/-. However, no BRC was received in any of shipping bill as per BRC Realized (FOB yet to be realized) report from ICES System. Exporter had filed most of the shipping bills in self and filed few shipping bills through two other CHA apart from M/s Ghanshyam Patel Freight Forwarders Pvt. Ltd, viz. **M/s Charania Associates, Custom Broker License No. (11/950)**, and M/s. Dehasu Logistics (previously, M/s. Entire Exim Solutions).

2.4 The premises of the Exporter M/s Aura Multitrade were searched by the officers of SIIB(Export) on 28.01.2021 to extract any further evidence. During the search, certain documents i.e. statement of invoices to be submitted with application of refund of unutilized ITC, e-way bill wise tax Invoice, Letter of Authority to Shri Rajesh Jadhav etc. were retrieved from the office premises.

2.5 It was found that the invoices produced by the exporter at the time of examination did not show correct and exact details of the goods exported vide the subject Shipping bill and invoice and as such they did not appear to represent true transaction value of the impugned goods.

2.6 Based on the Test Report 26.02.2021 received from DYCC, ACC, Mumbai, it is observed that: - 1. Men's Cotton T-shirt were found as per declaration and description by the Exporter. 2. Babies Garments were found either blended (Polyester and Cotton) or wholly polyester as against declared Cotton. 3. Dyed Knitted fabric was not declared in the Shipping Bill.

2.7 Based on the market enquiry report, the re-determined value (PMV) of the goods covered under the said 2 Shipping Bills came out to be Rs. 18,52,298.20/- , against the declared FOB value of Rs. 65,21,620/-/-. In view of this, it appears that the exporter had inflated FOB value of the export goods by Rs.46,69,321.80/- and claimed drawback of Rs.1,36,162.74/- as against the admissible Drawback of Rs. 39,039/-. The Exporter has mis-declared the goods covered under the said 2 Shipping Bills in terms of Classification, Quantity and Value.

2.8 The Exporter had failed to produce any document to prove the genuineness of Business transactions. Therefore, it is clear that export goods were purchased from non-registered suppliers and no statutory duty were

paid/levied by their suppliers to the Government Exchequer. Thus, the non-duty paid goods clearly indicates the complete mis-match of the exporter's supply chain. The Exporter did not submit any Foreign Remittance copy of the exported goods through the past shipments. It clearly implies that the exporter had purchased the goods from unregistered local suppliers at very low prices and raised fake invoices to clear the shipments to avail undue Export incentives including MEIS.

3. Past data of export were retrieved from ICES and it was found that the exporter M/s. Aura Multitrade had filed shipping bills through three CHA, M/s Charania Associates, M/s Entire Exim Solutions and M/s Ghanshyam Patel Freight Forwarders Pvt. Ltd.

4. **Summonses dated 12.08.2022, 08.09.2022, 11.11.2022 and 22.12.2022 were sent to M/s Charania Associates for recording their statement and giving evidence, however, they neither appeared in this office nor did they submit any clarification or documents till date.**

5. The provisions as laid down under CBLR, 2018 require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. The Regulations cause a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the Importer/Exporter. Dereliction/lack of due diligence by the CB has caused the Government exchequer loss of revenue in terms of evasion of Customs Duty/Drawback. Therefore, it is clear that the Customs Broker has actively connived with exporters in claiming inadmissible drawback and other export incentives by Overvaluing the export goods and mis-declaring the same in Shipping Bills.

In view of above, it appears that CB M/s. Charania Associates (11/950), has failed to comply with following regulations of the Customs Brokers Licensing Regulations 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;

The CB appears to have not advised the exporter and connived with exporter to claim duty drawback. Further, the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs of the discrepancy noticed or the shortcomings of the illegal exports.

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;*

The CB appears to have colluded with the exporter in claiming inadmissible drawback and other export incentives by overvaluing the export goods and mis-declaring the same in Shipping Bills. Therefore, the CB failed to exercise due diligence, which is in violation of regulation 10(e) of CBLR, 2018.

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

It is clear that export goods were purchased from non-registered suppliers and no statutory duty were paid/levied by their suppliers to the government exchequer. Since, the exporter had availed undue export incentives including drawback, RODTEP and ROSCTL, it shows that the CB did not inform the exporter about the instructions, circulars and public notice regarding claim of drawback. It appears that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 and abetted the exporter in claiming undue drawback, hence violated regulation 10(f) of CBLR, 2018.

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

Various summonses were issued to the Custom Broker M/s Charania Associates dated 12.08.2022, 08.09.2022, 11.11.2022 and 22.12.2022 but they didn't turn up for giving statement under section 108 of the Custom Act, 1962 which is in violation of regulations 10(q) of CBLR, 2018.

6. From the above facts it appeared that, prima facie, Customs Broker M/s Charania Associates (Licence no. 11/950, CB code AACFC6060ECH001) had violated Regulations 10(d), 10(e), 10(f) and 10(q) of CBLR, 2018.

In view of the above facts, the CB License held by M/s Charania Associates (11/950) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 46/2023-24 dated 29.02.2024 and personal hearing was granted to the CB on 13.03.2024 at 12.30 noon which was postponed to 19.03.2024 at 12:30 PM on the request of the CB.

7. WRITTEN SUBMISSION OF THE CB:- In response to the said Suspension Order, CB M/s Charania Associates (11/950) submitted their reply on

19.03.2024 through their authorized representative Adv. Sandeep Salvi. In the said submission:

- i) The CB had vehemently denied any involvement or connivance with M/s Aura Multitrade in any illegal activity pertaining to the filing of Shipping bills. Their role had been strictly limited to facilitating administrative procedures, and they categorically deny any knowledge or participation in the alleged illegal claims of duty drawback benefits.
- ii) The CB also emphasized that they solely relied upon the information furnished by the exporter in preparing the shipping bills. As CB, they were not vested with the authority to independently verify the accuracy or authenticity of the exported goods. Their role was confined to administrative facilitation, and they had diligently adhered to the regulatory framework governing their profession.
- iii) The CB denied having received the aforementioned summonses as those were not served at the correct addresses provided for communication.
- iv) The CB refused all the allegations levied against them and maintained that they had consistently operated with professionalism and integrity, adhering to all legal and ethical standards prescribed under the law.
- v) The CB earnestly urged to reconsider the suspension the license and to revoke the same. They assured their full cooperation with the authorities and committed to upholding compliance with all regulatory requirements in the future.

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 Charania Associates (11/950). Adv. Sandeep Salvi, authorized representative of the CB appeared for PH on 19.03.2024. He reiterated their written submission submitted vide letter dated 19.03.2024 and added that the summonses were sent to their old address which they changed in 2017 with due intimation to the policy section. O-in-O was also sent to the same old address. So, there is no fault of theirs that they did not cooperate.

DISCUSSION AND FINDINGS

9.1 I have carefully gone through the records of the case, the written submissions submitted by 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. 46/2023-24 dated 29.02.2024 is required to be continued or revoked.

9.3 CB, in his defence, submitted that their role had been strictly limited to facilitating administrative procedures, and they categorically deny any knowledge or participation in the alleged illegal claims of duty drawback benefits. They solely relied upon the information furnished by the exporter in preparing the shipping bills. As CB, they were not vested with the authority to independently verify the accuracy or authenticity of the exported goods. Their role was confined to administrative facilitation, and they had diligently adhered to the regulatory framework governing their profession.

I observe that the role of the CB is a very important role in customs clearance and they are a bridge between the customs and the importer/exporter. Hence, their duties are not restricted only to administrative purpose but as they are the frontline link, their duty is also to observe and intimate to the authorities, any shortcomings, if noticed. In the present case, the CB was involved in the clearance of overvalued goods, not conforming with the goods declared. Total of 65 shipping bills were cleared by the exporter and it was observed that no BRC was received in any of the shipping bills.

I observe that it is the responsibility of the CB to advise their client to make proper declaration related to consignment in the shipping bills, related to claiming benefits of various trade facilitation schemes such as duty drawback and RODTEP, however, the CB has failed to advise the exporter to claim correct duty drawback. The CB did not inform the exporter about the instructions, circulars and public notice regarding claim of drawback. The CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995.

Therefore, it appears that the CB has violated the provisions of regulation 10(d), 10(e) and 10(f) of the CBLR, 2018.

9.4. From the offence report, it is noticed that summonses dated 12.08.2022, 08.09.2022, 11.11.2022 and 22.12.2022 were sent to M/s Charania Associates for giving statement, however, they neither appeared before the issuing authority nor did they submit any clarification or documents, violating the regulation 10(q) of CBLR, 2018. The CB submitted that the summonses were sent to their old address which they changed in 2017 with due intimation to the policy section. I observe that upon checking the EDI system, it is confirmed that the address has been changed and the summonses were sent to different addresses, as stated by the CB. Therefore, the submission of the CB in this regard appears to be admissible.

9.5. 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...”

9.6. 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.”

9.7. In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 50/2023-24 dated 12.03.2024 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 Charania Associates (11/950) appeared to have failed to fulfil their obligations under Regulation 10(d), 10(e) & 10(f) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, CB M/s Charania Associates (11/950) 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 of the Customs Broker Licence of M/s Charania Associates (11/950) (AACFC6060ECH001) ordered vide Order no. 46/2023-24 dated 29.02.2024 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.

SJ
2/14/2024

(SUNIL JAIN)

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

To,

M/s Charania Associates (11/950) (AACFC6060ECH001),
1/12, Baitul Rehmat Building, Navroji Hill Road No. 19,
Dongri, Mumbai - 400 009

Copy to:

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