



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)

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/306/2022/CBS

Date: 31.10.2022

DIN: 2022117700000110844

ORDER NO. 37/2022-23

M/s. CSK Shipping Private Limited, (CHA No. AAHCC6600J), having address registered as 306, Madhuban Building, Cochin Street, Fort, Mumbai-400 001 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1765, issued by the Commissioner of Customs, Mumbai under Regulation 9(1) of CHALR, 2004, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report with respect to the role of the CB, M/s. CSK Shipping Private Limited received in this office from the CIU, NCH, wherein it is informed that M/s. Dinesh Enterprises (AROPG7528A) (hereinafter referred to as the 'Importer') having address registered at Khasra No. 21/21, behind Wine Shop, Jharoda Majra, Delhi-84 imported various goods i.e. Ladies Belly Sandal, Bag Accessories, ladies bag, Mobile Back Cover, PVC Sole, Artificial Flower, Wired Keyboard, Wired Mouse, wireless keyboard, Wireless Mouse, Headlamp Bulb, Motor For Wiper, Wireless keyboard & mouse and T-shirt, all declared as other than reputed brand. The total value of consignment declared is 10024.20 USD (C & F). The said consignment imported from China vide Bill of Entry No. 9736332 dated 26.07.2022 filed by the Customs Broker M/s. CSK Shipping Private Limited at Mumbai Port for home consumption.

3. The said goods were examined by the officers of CIU, NCH under panchnama dated 30.07.2022. On 100% examination, the following violations were observed by the officers of CIU:-

- i. Goods declared as ladies belly sandal, Mobile back cover, wired keyboard, wireless keyboard, headlamp bulb and motor for wiper were found in **pre-packaged condition** and thus falling under the purview of General Note 5 "Packaged products "of ITC (HS) read with DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 (LMPC).
- ii. Various goods such as PU Material in Rolls, miscellaneous toiletries (beauty and soap kits etc.), Keyboard Bases, Spare parts for keyboard and Wireless Dongle for personal computer were found undeclared in Bill of Entry.
- iii. Misdeclaration regarding quantity and description of many items was also found during the examination.
- iv. Miscellaneous toiletries and cosmetics items which require CDSCO NOC as per gazette notification no 426(E) 19.5.2010 in respect of registration for import and registration of cosmetics.

4. Based on the above, the goods imported vide B/E no. 9736332 dated 26.07.2022 were seized vide seizure memo no. 02/2022-23 under section 110(1) of the Customs Act, 1962 by the officers of CIU, NCH.

5. During the investigation, the statement of Shri Balasaheb V. Kale, director of M/s CSK Shipping Private Limited was recorded on 03.08.2022 under Section 108 of the Customs Act, 1962 wherein, he interalia stated that:-

- I. M/s Dinesh Enterprises (Importer) provided all the KYC Documents vide email dated 13.07.2022 and sent the original copies through courier. He also submitted copy of letter of M/s Dinesh Enterprises dated 01.04.2022 addressed to them enclosing copies of KYC, authority letter to CHA, IEC certificate, GST Certificate, Aadhar Card of owner, Bank AD code letter and electricity bill as address proof.
- II. They have Cleared three consignments earlier of M/s Dinesh Enterprises having Bills of Entry nos. 9540125 dt 13.07.2022, 9540120 dt 13.07.2022 and 9701680 dt 24.07.2022. He submitted documents supplied by the importer for filing of Bill of Entry for the previous three consignments which were customs cleared by them on behalf of M/s Dinesh Enterprises.
- III. On being asked, he stated that first they checked and verified importer's KYC Documents as per CBLR, 2018. Further on receiving the documents for filing the bill of entry, they checked each document required as per Customs Act and other allied acts and on finding them as per requirement they filed the concerned Bill of Entry. After all due diligence

- as Customs Broker they cleared consignments of M/s Dinesh Enterprises.
- IV. On being asked, he stated that they decided CTH of goods and the value was decided by the importer. The importer provided them the Invoice and they filed the Bill of Entry as per the information given by the importer.
 - V. During the re-examination, violation regarding LMPC, RE-44 Compliance, Mis Declaration, excess packages, labelling not as per BIS standard were found.
 - VI. Regarding the discrepancies, he stated that they prepared the bill of entry as per the documents supplied by the importer and that it was the responsibility of the importer about the content recovered during the examination. He reiterated that as a customs broker, they filed bill of entry on the basis of documents supplied by the importer, they only checked the CTH and decided the same on the basis of description mentioned by importer in the documents provided by importer to them.
 - VII. Importer provided all the documents before filing of the Bill of Entry. They checked documents which were required for the items mentioned in invoice provided by the importer. All the necessary documents were attached by the importer required as per norms hence they filed the bill of entry in the system as the necessary documents were there as per invoice. Hence there was no need of advice to the importer.
 - VIII. They did all the due diligence. For confirmation of the address proof they sent the documents received from Importer via email to its address mentioned in IEC through courier for signature on them and other documents of KYC as PAN, GST registration, IEC were ascertained through government websites.
 - IX. Other documents regarding compliance of Customs Act or any other allied Acts provided by importer, required as per items mentioned in Invoice, were also checked by them.
 - X. They sent the documents at the address mentioned at IEC for verification. Regarding the other address mentioned in authority letter, they asked the importer for the same telephonically for which the importer replied that address mentioned at authority letter was old and for that the importer also provided rent agreement.
 - XI. They asked the importer about the packaging of the goods telephonically for which the importer replied that all the goods were in bulk condition and hence they did not advise the importer about the requirement of the LMPC certificate.
 - XII. They did not inform the importer about pre-packaged condition of goods found during the examination, i.e. Ladies Bally sandal, Hand lamp Bulb

and Motor wiper, and also did not bring in the notice of the AC/DC of Customs.

6. The offence report dated 02.09.2022 stated that the Customs Broker M/s. CSK Shipping Private Limited contravened the regulation 10(d), 10(e), 10(m) and 10(o) of the Customs Broker Licensing Regulations, 2018.

7. In view of the above facts, the CB License held by M/s CSK Shipping Private Limited was suspended by the Pr. Commissioner of Customs (General) vide Order No. 28/2022-23 dated 19.09.2022 and personal hearing was granted to the CB on 29.09.2022 at 12.00 noon.

WRITTEN SUBMISSION OF THE CB

8. During the personal hearing, the CB through his authorized advocate submitted his submissions vide letter dated 28.09.2022 which are as under:

8.1 In defence of the charge of the violation of Regulation 10(d) of the CBLR, 2018, the CB submitted that it may be seen from the statement dated 03.08.2022 of the importer, Shri Dinesh Garg, that he did not imputed the customs broker in the alleged offence and he (importer) himself was unaware of the fact that the consignment contained goods in pre-packaged condition or in unlabelled condition and, that some goods which were not figuring in the invoice were found in the container. When the importer himself was unaware that such pre-packaged goods/unlabelled goods and undeclared goods were inside the container, then the customs broker cannot be expected to know the goods contained therein.

The advocate submitted that from the adjudication order, it may be noted that there was no allegation or finding that the customs broker connived with the importer to bring the pre-packaged/unlabelled and undeclared goods in the container. In fact, the only person, who knew the truth i.e. the Importer himself did not made any averment that the CB did not advise him the necessity to follow General Note 5 et al. Similarly, when there was no such allegation either in the Offence Report or the findings of the adjudicating authority, that the CB has not informed them of the necessity of declaration under General Note 5 or LMPC etc, then the allegation of violation of Regulation 10(d) cannot be sustained

The advocate further submitted that the Customs Broker had filed the Bill of Entry only on the basis of the documents received from the importer, as also admitted by the importer himself in his statement dated 03.08.2022, then the customs broker cannot be expected to know what is lying inside the

container and inside each of the cartons therein. As already stated by the Customs Broker H-Card Holder, in his statement dated 22.08.2022, the examination officer made a L-Shaped passage and randomly selected 120 packages for examination and did not raise any objection thereto relating to even non-labelling of the goods. Therefore, the customs broker himself saw the goods for the first time during the second 100% examination by the CIU wherein the abovementioned discrepancies were found. In such an eventuality, when the fact that the goods required LMPC etc were revealed for the first time in presence of CIU Officers, then the question of bringing the discrepancy to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs does not arise at all.

Hence both the allegations made in the impugned Order cannot be sustained in terms of Regulation 10(d), that the CB did not advise the importer to follow RE44 procedure for labelling. The importer himself stated that he himself was unaware that there were pre-packaged or unlabelled goods in the container. As to the second leg of Regulation 10(d), that he did not inform the Asst Commissioner of the violation, as revealed from the statement made on 22.08.2022, the goods were examined randomly by the examination officer and no objection regarding labelling of the goods was raised and it was only, when 100% examination was carried out by the CIU that the violations came to light. Hence the custom broker could not have reported to the Asst Commissioner, what he did not even know and came to be revealed only on 100% examination under AC, Docks supervision.

8.2 In defence of the charge of the violation of Regulation 10(e) of the CBLR, 2018, the CB submitted that the customs broker in his statement stated that they checked the applicability of BIS, LMPC, WPC Certificates from the importer, which show that due diligence was exercised by the customs broker. The importer himself in his statement dated 03.08.2022 had stated that, he himself was unaware that some of the goods were in pre-packaged/unlabelled condition, then the importer could not inform the broker of the same and the broker could not be alleged to have not exercised due diligence in imparting information to the importer.

The advocate further submitted that there was nothing in the impugned offence report or the adjudication order to suggest that the customs broker knew that some of the goods were in pre-packaged condition/unlabelled condition and yet he assured the importer that LMPC would not be required. There is simply no such imputation or allegation in the offence report or finding in the Adjudication Order. Therefore, there was no proof of the

allegation in the offence report that the CB did not inquire about the packages being in pre-packaged condition and that LMPC was required. Hence the allegation of violation of Regulation 10 (e) cannot be sustained.

8.3 In defence of the charge of the violation of Regulation 10(m) of the CBLR, 2018, the advocate submitted that the said Regulations expects the Customs Broker to discharge his duties with utmost speed and without any delay. The minute all the required documents were obtained from the importer, the checklist was prepared, got approved by importer and uploaded on the EDI system, which proved that he performed his duties with utmost speed and efficiency. When the Bill of Entry was assessed and the duty was paid, the customs broker immediately arranged for the examination and pass out charge for the container. There was no allegation or complaint by the service recipient i.e. the importer that the custom broker failed to act with utmost speed and efficiency and therefore, when the main service recipient himself was not dissatisfied with the service provided by the broker, the allegation cannot be sustained.

The advocate further submitted that the allegation that the customs broker did not upload the LMPC and did not seek clarification from importer was completely without any basis. The order itself acknowledged that the customs broker inquired from the Importer regarding the requirement of LMPC, BIS and ETA certificates and only after confirmation from the importer, he uploaded the checklist and approved checklist. Therefore, the allegation that he did not seek clarification from importer was without basis. In fact, the importer himself in his statement dated 03.08 2022 has clarified that he himself was unaware that the container contained goods in pre-packaged condition. When the importer himself was unaware of such pre-packaged goods, then the question of the custom broker knowing of the same and uploading the LMPC does not arise. It bears mention herein that LMPC is fully computer driven process and obtaining LMPC does not take more than 24 hours, in case, goods are present in container and require such LMPC.

In view of the above, the allegation of violation of regulation 10(m) of Customs Broker Licensing Regulations, 2018 cannot be sustained against the customs broker.

8.4 In defence of the charge of the violation of Regulation 10(o) of the CBLR, 2018, the advocate submitted that the Custom Broker did not change his office from Madhuban Building and the said Summons as well as the Suspension

Order were received only at Madhuban Building office. The same can be verified from the office records in the CIU section and the CBS Section. The address on the envelope was that of Madhuban Building only and not that of Bhandup. The reason for stating that the work as being operated from Bhandup was that the checklist etc were uploaded from Bhandup whereas the office work at Madhuban Building is still in operation. Till date, the Madhuban office is operational and therefore, there was no need under the Regulations to inform the CBS section or the GST office under the GST Law or the Registrar of Companies under the Company law. Besides, the said office space belongs a director of the company and is still in possession and ownership of the Director of the Company. Therefore, the allegation that the operations of the Customs Broker have shifted to Bhandup is completely incorrect.

In view of the above, the allegation of violation of Regulation 10(o) by the Customs Broker cannot be sustained.

8.5 The advocate further submitted that:

- a) It may be noted that even when the container was given Pass Out of Customs Charge, when the CIU officers approached the Customs Broker, he fully cooperated with the CIU officers in informing the exact location of the container and assisted in bringing back the container to the Docks Area where the CIU officers could do the 100% examination and seize the goods. The Customs Broker also produced the importer when required by the CIU officers and therefore, has fully cooperated with the department since his bread & butter comes from the work carried out in the customs department. Hence the allegation that he did not inform the Asst Commissioner or Dy Commissioner of customs or did not cooperate with the investigation agency was completely incorrect.
- b) The advocate also submitted that there are various case laws where it is clearly held that unless there is connivance between the importer and the broker to defraud revenue, no such action which affects the livelihood of the customs broker and the various employees working under him should be taken.
- c) The advocate further submitted that the suspension of Licence is a drastic option provided under the Regulations. In the present instance, there has not a single case of any such misdemeanour on the part of the Custom Broker so as to order immediate suspension of the licence. The goods were found to be in violation of law only upon 100% examination by the CIU officers and there is no allegation in the offence report that the custom broker was aware of the nature of packaging or the labelling of goods within the container. Therefore, prayed that the drastic option

- may not be adopted and action, as deemed fit, may be taken only after due inquiry under Regulation 17 of the CBLR 2018, if necessary.
- d) In the light of the above submissions, it is prayed that the suspension of the licence may be revoked and inquiry ordered to look into the allegations made in the offence report so that the livelihood of the customs broker and the staff working in his office are not affected.

RECORD OF PERSONAL HEARING OF THE CB

09. Shri Sanjay Singhal (Advocate) authorized representative of M/s CSK Shipping Private Limited appeared for PH on 29.09.2022. The Advocate reiterated and summarised the brief facts of the case and submitted his submissions vide letter dated 28.09.2022. He requested that an inquiry in the subject matter may be initiated and the revocation of the suspension of the CB Licence may be done.

DISCUSSION AND FINDINGS

10. I have gone through the records of the case, material on record, offence report dated 02.09.2022 issued by CIU, NCH, regulations relevant to the case, written submission made by the CB and examined the role and conduct of CB in the case before me.

11. The license of Customs Broker M/s CSK Shipping Private Limited, (PAN No. AAHCC6600J) was suspended vide Order No. 28/2022-23 dated 19.09.2022 based on the offence report dated 02.09.2022 received from CIU New Custom House.

12. I find that charges against CB i.e. violation of Regulation 10(d), 10(e) 10(m) & 10(o) of CBLR, 2018 were alleged in the offence report dated 02.09.2022.

13. I find, from the offence report that the CB failed to properly advise their client M/s Dinesh Enterprises regarding the rules and regulations of customs and allied acts by not informing them about the declarations to be made for pre-packaged goods falling under the purview of General Note 5 "packaged products" of ITC (HS) read with DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011 (LMPC). The Customs Broker also failed to inform/bring this to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Hence, the CB appears to have violated the provisions of Regulation 10(d) of CBLR, 2018.

14. I find, from the offence report that the various imported goods were found in pre-packaged condition and as per Rule 27 of the Legal Metrology (Packaged Commodities) Rules, 2011 (LMPC), the importer is mandated to make an application to the Director or Controller of Registration within 90 days from the date on which he commences pre-packing. However, no such Registration Certificate (LMPC certificate) has been produced. The Customs Broker in his statement given under Section 108 of Customs Act, 1962 admitted that their firm checked the applicability of BIS, LMPC, WPC certificates after consulting with the importer. However, by not inquiring about the condition of the goods i.e. pre-packaged or bulk and by not informing the importer about the requirement of the aforesaid LMPC certificate, it appears that the Customs Broker has not exercised due diligence to ascertain the correctness of information pertaining to LMPC certificate to his client thereby violating the provisions of Regulation 10(e) of the CBLR, 2018.

15. I find, from the offence report that Misdeclaration regarding quantity and description of many items and undeclared goods were found by CIU officers during the examination, hence the offence report states that the Customs Broker, by not uploading the correct documents viz LMPC Certificate and by not seeking necessary clarifications from the importer has failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance thereby appears to have violated the provisions of Regulation 10(m) of the CBLR, 2018.

16. I find, from the offence report that the CB under his voluntary statement tendered under Section 108 of Customs Act, 1962 on 03.08.2021 stated that his office address is at Madhuban Building, office No. 306, Ballard Estate, Plot No. 323 Mumbai-400001 but due to renovation at the Madhuban building currently they are running their office from the office situated at Room no. 1, Asmita Sarakari Patsanstha Maryadit (Muktadevi), Chatrapatti Sahu Maharaj Vyamshala, Maharashtra Nagar, Bhandup(W), Mumbai-78. He also stated that they have not intimated the said address to the CBS Section nor to GST Authorities and hence the CB appears to have violated the regulation 10(o) of the CBLR, 2018.

17. From the above facts, prima-facie, the Customs Broker M/s. CSK Shipping Private Limited (CB No. 11/1765) appeared to have failed to fulfil their obligations under Regulation 10(d), 10(e), 10(m) and 10(o) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as

above. CB M/s CSK Shipping Private Limited (CB No. 11/1765) appeared liable and guilty. I find that the CB has failed to discharge duties cast on them with respect to Regulation 10(d), 10(e), 10(m) and 10(o) of CBLR, 2018. Hence, all the charges sustain for the time being and can form grounds for continuation of the order of suspension.

18. 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 CSK Shipping Private Limited (CB No. 11/1765) (PAN No. AAHCC6600J) ordered vide Order no. 28/2022-23 dated 19.09.2022 shall be continued, 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.


31/10/2022
(SUNIL JAIN)

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

To,
M/s CSK Shipping Private Limited, (CB No. 11/1765),
306, Madhuban Building, Cochin Street,
Fort, Mumbai-400 001

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