



प्रधानआयुक्त) सामान्य (सीमाशुल्ककाकार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
 कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
 बेलाईस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F. No. GEN/CB/ACTN/6/2022-CBS

Date: 04.02.2022

DIN: १०३२०२७७०००००००००९९९

ORDER NO. 38/2021-22

M/s Yes Clearing Solutions (CHA no. 11/2248) (PAN No. ANEPG1309D) hereinafter referred to as the Customs Broker situated at B-304, Unity Apartment CHSL, Damodar Park, Ghatkopar (W)-400086 is holding a regular Custom Broker License No 11/2248 issued by Commissioner of Customs, Mumbai under Regulation 7(1) of the Customs Broker Licensing Regulations (CBLR, 2013) and such they are bound by the regulation and condition stipulated therein.

2. A Shipping Bill No. 5111423 dated 11.09.2020 was filed by Customs broker M/s Yes Clearing Solutions (CHA no. 11/2248) on behalf of exporter M/s Orchid International (IEC - EVHPK7478E) having address at 240, Janta Colony, Gilbert Hill road, Near Mohammadi Masjid Andheri (west), Maharashtra - 400058, was forwarded by DC/ICTPL CFS for examination under SIIB/CIU supervision.

3. When I.O. went to ICTPL (Globicon International) for examination. There were total 46 pallets in the said shipping bill each having dimension 90 inches*28 inches*24 inches. During examination of goods, I.O. observed that each pallet has 20 filler sheet (cellular of plastics) as declared in the shipping bill and upper 3-4 sheets were loose and remaining sheets were bonded together very firmly with some kind glue/chemical. When the officer weighed one loose plastic sheet, its weight was 05 kg. Then officer took weight of one whole pallet having 20 filler sheet which was around 220 kg. However, the total weight of pallet should be around 100 Kgs (20 * 5 kg).

4. Subsequently, SIIB (X) team went to the CFS and secured the goods under camera. CB Shri Sanjay Sargar was called and came for examination of goods. Two panchas namely Shri Vithoba Arjun Gawade and Shri KunalManohar Mhatre were called to witness detailed examination of the said goods under Panchnama dated 15.09.2020. Each plastic sheet was cut open with the help of two fork-lifts. After cutting off bonded plastic sheets of each pallet, it was observed that each pallet was having a cavity created that contained wooden logs which appeared to be red sanders and were of different size and weight. On measurement, the wooden logs weighed 6155.08 Kgs. Meanwhile, WLRO officials were called and Shri B. S. Khati, Inspector, WLRO, Belapur visited the CFS and after inspection confirmed that wooden logs were Red Sanders. The detailed inventory is produced below:

Sr. No.	Pallet No.	No. of wooden logs	Weight in kgs
1.	1	05	137
2.	2	04	97.8
3.	3	08	135.3
4.	4	06	157.9
5.	5	06	129.5
6.	6	03	107.3
7.	7	04	110.5
8.	8	07	122.55
9.	9	05	120.8
10.	10	05	148.25
11.	11	05	171.6
12.	12	05	136.65
13.	13	05	154.65
14.	14	07	130.8
15.	15	06	126.85
16.	16	07	143.05
17.	17	04	103.85
18.	18	07	114.95
19.	19	04	160.05
20.	20	05	130.95
21.	21	04	115.6
22.	22	04	105.7
23.	23	05	119.55
24.	24	06	126.05
25.	25	05	110.10
26.	26	05	115.6

27.	27	06	155.3
28.	28	06	119.08
29.	29	04	121.65
30.	30	04	118.7
31.	31	05	120.9
32.	32	04	111.5
33.	33	05	123.05
34.	34	07	155.6
35.	35	06	142.25
36.	36	04	155.2
37.	37	05	154.1
38.	38	06	150.4
39.	39	07	142.3
40.	40	04	148.5
41.	41	06	134.3
42.	42	07	154.45
43.	43	05	145.35
44.	44	06	139.65
45.	45	06	192.25
46.	46	04	147.6
Total	46	244	6155.08

5. The export of red sanders, classified under tariff item HS code 44039918 & 44079990, which falls under Sr.No. 188 of Chapter 44 of ITC (HS), 2018, Schedule-2 (Export policy), vide Notification No. 56/2015-20 dated 18.02.2019, is prohibited. Further, red sanders (*Pterocarpussantalinus*) is an endangered species and figures in the Appendix-II of Convention on International Trade in Endangered species of Wild Flora and Fauna (CITES). Therefore the said goods were seized from Export Shed of ICTPL (Globicon) CFS under Section 110 of the Customs Act, 1962. The same are liable for confiscation under Section 113(d) and 113(h)(i) of the Customs Act 1962.

6. Statement of Shri Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) was recorded under Section 108 of Customs Act 1962 on 16.09.2020 and 22.09.2020 wherein he interalia stated that he came in contact with exporter M/s Orchid International through Mr. Amit Parikh, the forwarder of M/s Stellar Air & Surface and he never met with the exporter; that Mr. Sanjay Sargar working in his office has always telephonically conversed with Mr. Sameer Shaikh, an employee of firm M/s Orchid International and he never spoke nor met him in person. However, Mr. Sameer Shaikh visited his office once; that his firm has filed the Shipping Bill on behalf of M/s Orchid International; that he has exporter's KYC documents, which he verified through online portal whichever possible; that he has not physically verified the address of the exporter M/s Orchid International. He further stated that he had filed 2 shipping Bills on behalf of M/s Orchid International; that he has arranged the transportation for JNCH port this time only; that he received the Export Invoices and Packing lists through e-mail by freight forwarder M/s. Stellar Air & Surface; that Shri Dinanath Kharade, Operation Manager working in his office booked trailer/vehicle for the transportation of export goods from M/s Moreshwar Container Movers, Nerul under his supervision. He has further stated that he had not verified the identity of Mr. Sameer Shaikh and he believed him to be employee of M/s. Orchid International on the basis of information given by Mr. Amit Parikh of M/s Stellar Air and Surface LLP.

7. Statement of Shri Amit Anil Parikh, freight forwarder of M/s Stellar Air & Surface Transport LLP was recorded under Section 108 of Customs Act 1962 on 16.09.2020 wherein he interalia stated that Mr. Sameer Shaikh saw their advertisement through online mode and he contacted our branch executive and submitted all KYC documents personally. At the time of handing over of KYC documents, Mr. Sameer told that he was an employee of M/s Orchid International; that Mr. Sameer Shaikh contacted him through email; that he never met Mr. Asif Khan; that he came in contact with M/s Yes Clearing through his old colleague; that he booked container from Shipping Line Good Rich Maritime; that Mr. Sameer Shaikh told him that he would stuff the container at Contegrate Entegrate Entrepot Pvt. Ltd, Compound No. 1040, Near Pan India Empty yard, off GavhanPhata, JNPT Road in order to reduce cost of exports as explained by Mr. Sameer Shaikh.

8. Statement of Mr. Asif Khan was recorded under Section 108 of Customs Act 1962 on 17.09.2020 wherein he interalia stated that IEC of M/s Orchid International is registered in his name; that one Person Mr. Rakesh Mane took his documents for opening of IEC and promised him to pay Rs. 8000/- per month; that he has been working at CSMI Airport as trolley retriever for last 14 years & met and got acquainted Mr. Rakesh Mane at T2 terminal CSMI Airport; that he met Mr. Rakesh Mane 4 - 5 times; that he has filed the Shipping Bill No. 5111423 dtd. 11.09.2020 pertaining to company M/s. Orchid International; that he had signed the Shipping Bill and related documents but completely unaware about the contents; that he was not aware of Red Sanders. On 18.09.20, he stated that he did not have ID Proof of Shri Rakesh Mane; that Shri Rakesh used to give money for export in his Indusind Bank account; that approx. 10-12 lakhs per month was transferred through his bank account for the exports done in the name of M/s Orchid International; that he used to withdraw money from account of M/s Orchid International and handover the same to one of the employee of Shri Rakesh Mane.

9. The policy relating to exports is given in Chapter 2 of the Foreign Trade Policy 2015-2020 and as per Para 2.01 of the said Foreign Trade Policy 2015-2020, "exports and imports shall be free, except in cases where they are regulated by the provisions of this policy or any other law for that time being in force. The item wise export and import policy shall be, as specified in ITC(HS) published and notified by Director General of Foreign Trade, as amended from time to time". Further, Schedule 2 (Export Policy) of the ITC (HS) specifies the export policy against each of items listed therein.

Tariff Item HS Code	Item Description	Export Policy	Nature of restriction
4403 9918	Red Sanders	Prohibited	Not permitted to be exported

Further, Red Sanders (*Pterocarpussautatinus*) is an endangered species and figures in Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) signed by 175 countries of the world (effective since 18.10.1976), both India and United Arab Emirates (the country of destination of the subject goods) are among them.

10. The Adjudicating Authority observed that Mr. Asif Khan, IEC holder of M/s Orchid International is responsible for the commission of wrongful act committed by him, which aided and abetted the said attempted fraudulent export of Red Sanders covered under Shipping Bill no. 5111423 dated 11.09.2020 and made it liable for confiscation under Section 113(d), 113(h) and 113(i) of the Customs Act 1962 and therefore Mr. Asif Khan, IEC holder of M/s Orchid International is liable for penalty and thereby he has rendered himself liable to penal action under Section 114(i) of the Customs Act, 1962.

11. The Adjudicating Authority further observed that Mr. Amit Anil Parikh, managing partner of freight forwarder M/s Stellar Air & Surface Transport LLP is responsible for the commission of wrongful act committed by him, which aided and abetted the said attempted fraudulent export of Red Sanders covered under Shipping Bill no. 5111423 dated 11.09.2020 and made it liable for confiscation under Section 113(d), 113(h) and 113(i) of the Customs Act 1962 and therefore Mr. Amit Anil Parikh, managing partner of freight forwarder of M/s Stellar Air & Surface Transport LLP is liable for penalty and thereby he has rendered himself liable to penal action under Section 114(i) of the Customs Act, 1962.

12. Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) in his statement recorded under Section 108 of Customs Act 1962 on 16.09.2020 and 22.09.2020 inter alia stated that he came in contact with exporter M/s Orchid International through Mr. Amit Parikh, the forwarder of M/s Stellar Air & Surface and he never met with the exporter; that Mr. Sanjay Sargar working in his office has always telephonically conversed with Mr. Sameer Shaikh, an employee of firm M/s Orchid International and he never spoke nor met him in person. However, Mr. Sameer Shaikh visited his office once; that his firm has filed the Shipping Bill on behalf of M/s Orchid International; that he has exporter's KYC documents; that he has not physically verified the address of the exporter M/s Orchid International. He has further stated that he had not verified the identity of Mr. Sameer Shaikh and he believed him to be employee of

M/s. Orchid International on the basis of information given by Mr. Amit Parikh of M/s Stellar Air and Surface LLP.

13. In view of the above provisions, it is cogent and clear that, Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) is responsible for the commission of wrongful act committed by him, which aided and abetted the said attempted fraudulent export of Red Sanders covered under Shipping Bill no. 5111423 dated 11.09.2020 and made it liable for confiscation under Section 113(d), 113(h) and 113(i) of the Customs Act 1962 and therefore Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) is liable for penalty and thereby he has rendered himself liable to penal action under Section 114(i) of the Customs Act, 1962.

14. Accordingly a penalty of Rs/- 24,50,000 was imposed on CB M/s Yes Clearing Solutions and subsequently a penalty of Rs/- 24,50,000 was imposed on Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) by adjudicating authority for aforesaid Omissions and Commissions by the CB.

15. In view of the above, it appears that the CB M/s Yes Clearing Solutions (11/2248) has failed to fulfill the obligations mandated under Regulation 10(a), 10(d) and 10(n) of CBLR 2018.

16. Regulation 10(a) of CBLR 2018:- *CB shall 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;*

Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) in his statement recorded under Section 108 of Customs Act 1962 on 16.09.2020 and 22.09.2020 interalia stated that he came in contact with exporter M/s Orchid International through Mr. Amit Parikh, the forwarder of M/s Stellar Air & Surface and he never met with the exporter; that Mr. Sanjay Sargar working in his office has always telephonically conversed with Mr. Sameer Shaikh, an employee of firm M/s Orchid International and he never spoke nor met him in person. However, Mr. Sameer Shaikh visited his office once; that his firm has filed the Shipping Bill on behalf of M/s Orchid International; that he has exporter's KYC documents; that he has not physically verified the address of the exporter M/s Orchid International. He has further stated that he had not verified the identity of Mr. Sameer Shaikh and he believed him to be employee of M/s. Orchid International on the basis of information given by Mr. Amit Parikh of M/s Stellar Air and Surface LLP. In the instant case the CB has not taken authorisation from the IEC Holder. Had he met with the original IEC holder, he would have realized that the export of prohibited goods being carried out by mastermind Sh. Rakesh Mane would have been prevented. Thus, it appears that the CB had failed to fulfill the provisions mandated under regulation 10(a) of the CBLR 2018.

17. Regulation 10(d) of CBLR 2018:- *CB should 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;*

Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) in his statement recorded under Section 108 of Customs Act 1962 on 16.09.2020 and 22.09.2020 interalia stated that he came in contact with exporter M/s Orchid International through Mr. Amit Parikh, the forwarder of M/s Stellar Air & Surface and he never met with the exporter; that Mr. Sanjay Sargar working in his office has always telephonically conversed with Mr. Sameer Shaikh, an employee of firm M/s Orchid International and he never spoke nor met him in person. However, Mr. Sameer Shaikh visited his office once; that his firm has filed the Shipping Bill on behalf of M/s Orchid International; that he has exporter's KYC documents; that he has not physically verified the address of the exporter M/s Orchid International. He has further stated that he had not verified the identity of Mr. Sameer Shaikh and he believed him to be employee of M/s. Orchid International on the basis of information given by Mr. Amit Parikh of M/s Stellar Air and Surface LLP. The CB had no contact with the original exporter so as to advise him to comply with the provisions of the Act. CB should not have acted as per the directions of the person who were not the actual exporters. Thus, it appears that the CB had failed to fulfill the provisions mandated under regulation 10(d) of the CBLR 2018.

18. Regulation 10(n) of CBLR 2018:- *CB should 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;*

Mr. Dattatray V. Gawade, proprietor of Customs Broker M/s Yes Clearing Solutions (11/2248) in his statement recorded under Section 108 of Customs Act 1962 on 16.09.2020 and 22.09.2020 interalia stated that he came in contact with exporter M/s Orchid International through Mr. Amit Parikh, the forwarder of M/s Stellar Air & Surface and he never met with the exporter; that Mr. Sanjay Sargar working in his office has always telephonically conversed with Mr. Sameer Shaikh, an employee of firm M/s Orchid International and he never spoke nor met him in person. However, Mr. Sameer Shaikh visited his office once; that his firm has filed the Shipping Bill on behalf of M/s Orchid International; that he has exporter's KYC documents; that he has not physically verified the address of the exporter M/s Orchid International. He has further stated that he had not verified the identity of Mr. Sameer Shaikh and he believed him to be employee of M/s. Orchid International on the basis of information given by Mr. Amit Parikh of M/s Stellar Air and Surface LLP. Thus, it appears that the CB failed to check the authenticity of the importer by using reliable means and has violated the obligations mandated under Regulation 10(n) of CBLR 2018.

19. In view of the above, considering the acts of Omission and Commission on the part of the Customs Broker M/s Yes Clearing Solutions (CB No. 11/2248), it appears that the said firm has violated Regulation 10(a), 10(d) and 10(n) of CBLR 2018 and is liable for action under provisions of the said Regulations.

20. Accordingly, I pass the following order: -

ORDER

01. I, Pr. Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (1) of CBLR,

2018, hereby suspend the Licence Customs Broker M/s Yes Clearing Solutions (CB No. 11/2248), being fully satisfied that the Customs Broker has Prima-facie not fulfilled their obligations as laid down under Regulation 10(a), 10(d) and 10(n) of the Customs Brokers Licensing Regulations, 2018.

02. However, I offer the Customs Broker M/s Yes Clearing Solutions (CB No. 11/2248) opportunity of personal hearing on 14.02.2022 at 11.30 am. Any written representation against this order should reach the undersigned before the date of hearing.
03. CB, M/s Yes Clearing Solutions (CB No. 11/2248) is directed to surrender all the Original Customs Passes issued to their employees/partner/director/proprietor immediately.
04. 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.

Ab
9/2/22
(Sunil Jain)

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

To,

M/s Yes Clearing Solutions (CHA no. 11/2248) (PAN No. ANEPG1309D)

B-304, Unity Apartment CHSL,

Damodar Park, Ghatkopar (W)-400086

EM 8828 3011470

Copy to:

1. The Principal/Chief Commissioner of Customs, Mumbai I, II, III Zone
2. The Pr. Commissioner of Customs(Preventive), NCH, Mumbai.
3. CIU's of NCH, ACC & JNCH
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5. Bombay Custom House Agent Association
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