सीमा शुल्क प्रधान आयुक्त (सामान्य) का कार्यालय
OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (GENERAL),
कस्टम ब्रोकर अनुभाग , नवीन सीमा शुल्क भवन,
CUSTOM BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्ड इस्टेट , मुंबई – 400 001
BALLARD ESTATE, MUMBAI - 400 001.
Email-Id: cbsec.nch@gov.in

F.No.GEN/CB/42/2022-CBS Date : 26-05-2022

DIN : 20220577000000020252

ORDER NO. 09 /2022-23

M/s. Siddhesh Logistics, (PAN No. AELFS7870P) [Previously having PAN No. AISPD7308Q], having their registered office at No. 1602, Kailash Tower, Shiv Shristi Complex, Nahur Link Road, Mulund (West), Mumbai – 400080 (hereinafter referred as the Customs Broker/ CB) is holder of Customs Broker License No.11/2493 issued by the Principal Commissioner of Customs, Mumbai under Regulation 7(2) of CBLR, 2018 and as such they are bound by the regulations and conditions stipulated therein. The validity of the Custom Broker license No. 11/2493 held by M/s. Siddhesh Logistics is up to 29-11-2028.

2. The said Custom Broker License was a Proprietorship firm at the time of receipt of the offence report. The Proprietor and the Authorized Signatory ('F' Category) of the said CB firm was Mrs. Jayshree Tushar Diwate. The CB Firm then reconstituted itself from Proprietorship concern to Partnership concern. Now, the partners of the said company are Ms. Jayshree Tushar Diwate, Mr. Kuldeep Sharma and Mrs. Yamini Sharma.

3. This office has received an offense report from SIIB (Import), NS-V, JNCH, Nhava Sheva wherein it has been informed that their office had initiated an enquiry against M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) in respect of import made by the said firm vide Bill of Entry No 6558719 dated 06.12.2021. The cargo/goods covered under said Bill of Entry was examined under Panchnama dated 08.12.2021. During the examination, it was noticed that the imported goods vide the said Bill of Entry were "dry dates" and further it was also noticed from packing material and labelling thereon, that imported goods appears to be originating from Pakistan.

4. The impugned goods i.e. Dry Dates were packed in two layers of packing material-inner layer-plastic & outer layer - gunny jute bag. In both inner and outer layer, there were no marks indicating origin of the goods as UAE except a paper sticker containing details of FSSAI, Country of Origin as UAE, Date of

Packing/Expiry & Net Weight/Gross Weight which was loosely pasted on each gunny jute bag which could be removed easily *as such* and re-pasted as it is, on same jute bag or other jute bags. Also the said jute bags had green color label/stickers stitched thereon having marking, 'SARGODHA Manufacturers & Exporters of High Quality Jute Products in Pakistan (Email: info@sargodhajute.com, Website: www.sargodhaiute.com). The Tags/Labels of M/s Sargodha Jute Mills Limited is found in a BLUE and Green color. Thus it appeared to be a case of mis-declaration in terms of Customs Act, 1962 with an intent to evade Customs duty.

5. During the search of the registered premises of the importer mentioned in Bill of Entry, Bill of Lading and IEC, by Delhi Customs (Preventive) team, it was found that those addresses of the importer were not in existence or those are not related to the importer. Further, search of premise mentioned in the passport of the importer was also conducted by Bengaluru Customs (Preventive) team, and again it was found that the subject premises was not related to M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) and no person by name A. S. Faiz Hussaini (Proprietor of M/s. ESS ESS Worldwide Cargo & Logistics INC) is/was living therein.

6. During the course of investigation, the statement of Shri Ranjeet Kumar, 'G' Card holder of M/s. Siddhesh Logistics was recorded under section 108 of Customs Act, 1962 on 14.12.2021, wherein he inter alia stated that they got the import related documents of M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) in the subject case from one Shri Laxman Shirke on behalf of importer and he never met the importer face to face; that he did not verify the address of the importer and the same was done by their branch manager Ms. Seema K Chowdhury; that after final print of documents Ms. Seema K Chowdhury verifies the details and he did not verify the KYC details of the importer M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) in this case.

7. During the course of investigation, statement of Ms Seema K Chowdhury, Branch Manager of M/s Siddhesh Logistics was recorded under section 108 of the Customs Act, 1962, wherein she inter alia stated that she got documents from Shri Laxman Shirke who introduced her with the importer through mobile phone; that she never met the importer face to face; that she got verified the address of the importer at Delhi through her known person Shri Sanjay Singh residing in Delhi; that their owner/CB License holder Ms Jayashree Tusar Diwate had authorized her to sign all documents except Customs related. Thus, it appeared that Ms. Seema K Chowdhury was doing all Customs related works without any valid Customs Pass

issued by the Department and she does not have any sense of responsibility which a Customs Broker or its employee should have.

8. Further, Ms. Jayashree Tusar Diwate ('F' Category and Proprietor of M/s Siddhesh Logistics) has authorized Ms. Seema K Chowdhury to carry out all Customs related works and signing all documents including KYC of the importer's despite knowing that Ms Seema K Chowdhury does not have any Customs Pass to carry out all those works.

9. Subsequently, summons dated 24.12.2021 & 18.01.2022 were issued to Ms. Jayashree Tusar Diwate, license holder of M/s Siddhesh Logistics (Customs Broker 11/2493) but she did not appear before the authorities in compliance of the above summons.

10. From the above facts in the instant case, it appeared that the Customs Broker M/s Siddhesh Logistics failed to verify the KYC details and antecedents of the importers as the registered premises of the importer available on records were either not found or found not related to the importer. Further, License holder Ms. Jayashree Tusar Diwate has authorized Ms Seema K Chowdhury to carry out all works on her behalf including signing of the documents whereas she does not have any Customs Pass issued under Section 146 of Customs Act 1962 and therefore, License holder Ms Jayashree Tusar Diwate of M/s Siddhesh Logistics (CB) by her acts of above omissions and commissions has violated the provisions of Sub-Regulation (3), (4), (7) and (12) of Regulations 13 of CBLR 2018.

11. Further, in the instant case, since the Custom Broker M/s. Siddhesh Logistics failed to verify the KYC details and antecedents of the importer M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C), it appeared that the CB has violated the provisions of Regulation 10(e), 10(n) and 10(q) of CBLR. 2018.

12. A brief detail of the Regulations of the CBLR, 2018 is reproduced hereunder :

(i) Regulation 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;

(ii) Regulation 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;"

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

(iv) Regulation 13(3) : "A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information:

Provided that such an employed person shall possess the Aadhaar number issued to him and that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent."

(v) Regulation 13(4) : "Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person."

(vi) Regulation 13(7) : " A Customs Broker shall authorise only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made thereunder."

(vii) Regulation 13(12) : " The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."

13. Prima facie it appeared that by their actions of omissions and commisssions, the Custom Broker M/s. Siddhesh Logistics (CB No 11/2493)

has violated Regulation 10(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of Customs Brokers Licensing Regulations, 2018.

14. In view of the above, the CB License held by M/s. Siddhesh Logistics (CB No 11/2493) was suspended by the Pr. Commissioner of Customs (General) vide Order No.03/2022-23 dated 08.04.2022 and personal hearing was granted to the CB on 21.04.2022. The authorized representative of the CB vide letter dated 21.04.2022 sought adjournment of the said personal hearing and accordingly the personal hearing was re-fixed on 12.05.2022.

RECORD OF PERSONAL HEARING

15. The authorized representative of the CB M/s. Siddhesh Logistics (CB No 11/2493) appeared for Personal Hearing through virtual mode on 12.05.2022 at 12.00 P.M. He reiterated and summarised his written submissions dated 11.05.2022 and requested to revoke the suspension order since it was the only source for any bread and butter for his client and his (CB's) employees. He also requested to revoke the suspension in the interest of justice and as it is their fundamental right.

WRITTEN SUBMISSION OF CB

16. The CB through their authorized representative submitted a written submission dated 11.05.2022 through email wherein inter alia the following submissions were made by the CB:

i) In respect of the Regulation 10 (e) of the CBLR, 2018, the CB submitted that identifying documents such as IEC number, GST number and identity of importer are the pre-requisites to verify the genuineness of the importer; that these documents have been checked and collected by Customs Broker from the Importer prior to filing the Bill of Entry for import; that these documents filed by the importer are neither disputed nor contradicted by the department; that the investigation too has not pointed any deficiency in this regard, as to doubt the Customs Broker for any lack of diligence; that any illegal act on the part of Importer leading to violation of Customs Act, 1962 are totally independent in nature and do not cast liability on the broker; that in the absence of prior knowledge, intelligence about the goods and any other mis-declaration by importer, the Broker was not in a position to ascertain the correctness of the nature of the goods declared by the importer; that Customs broker cannot be held responsible for the acts of the importer unearthed by investigation; that the

importer is solely liable for his acts and so, dragging the Customs Broker for the offence of illegal import, if any, by importer of goods is by itself wrong, unjustifiable and blatantly illegal; that the Customs Broker is merely an Agent for the purpose of clearance of goods and discharges his limited duties on fixed fees; that the Customs Broker has not imparted any information to the importer, which has been found to be incorrect, therefore they have not violated the provisions of Regulation 10(e) supra.

ii) In respect of Regulation 10(n) of the CBLR, 2018, the Customs broker submitted that the duty of a Customs Broker is confined to obtaining the relevant KYC documents and he cannot be held responsible for not physically verifying the address of the exporter/importer; that the existence of address was verified by the independent and known source and this fact has been observed during the course of investigation and incorporated para 7 in the present Order; that the declared address of the CB is required to be verified by the Customs Broker only with reference to documents and not physically; that various Tribunal judgments support the basis on which the verification is to be made for its compliance.

The CB relied on the following case laws in support of their argument:

(a) Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi [2017-TIOL-894-HC-DEL-CUS]

(b) Commissioner of Customs vs. Shiva Khurana [2019-TIOL-178-HC-DEL-CUS]

(c) Nimesh Suchde vs. Commissioner of Customs, Nhava Sheva [2007-TIOL-116-CESTAT-MUM].

iii) In respect of Regulation 10(q) of the CBLR, 2018, it is submitted that at every stage of enquiry and investigation cooperation has been extended to the authorities as a matter of obligation; that non-appearance before the investigation officer on certain dates was due to the pandemic corona virus or other genuine reasons; that the statements of various employees recorded during the course of investigation are proof by itself that full cooperation was extended to the department; that the Customs Broker has not violated the provisions of Regulation 10 (q) supra.

iv) In respect of Regulation 13 (3) of the CBLR, 2018, the Customs Broker submitted that while employing the persons to assist the Customs Broker, due verification was done with respect to Aadhar Card number and the prescribed minimum qualification of the employees; that the Department has not brought

out any specific instances where Customs Broker has not caused verification before deploying the persons; that the Customs Broker has not violated the provisions of Regulation 13(3) of the Regulations.

v) In respect of Regulation 13 (4) of the CBLR, 2018, the Customs Broker submitted that the required procedure has been followed by the Customs Broker.

vi) In respect of Regulation 13 (7) of the CBLR, 2018, the Customs Broker submitted that during the functioning, the procedure has been strictly followed and adhered and only those employees who have been issued Customs Passes in the format 'G' and 'F' under CBLR, were signing the documents viz. Bill of Entry and Shipping Bill.

vii) In respect of Regulation 13 (12) of the CBLR, 2018, the Customs Broker submitted that there has been no lack of supervision on the part of Customs Broker and denied that there were any acts of omissions of the company's employees during their employment and conduct of business.

DISCUSSION AND FINDINGS

1. I have gone through the fact of the case. The issue before me at the present instance is limited to determining whether the continuation of suspension of the CB License is warranted or otherwise in the instant case in the light of the material on record.

2. I find that the license of Customs Broker M/s. Siddhesh Logistics (CB No 11/2493) (PAN No. AELFS7870P) was suspended vide Order No.03/2022-23 dated 08.04.2022 based on the offence report received from SIIB (Import), NS-V, JNCH, Nhava Sheva.

3. The power under Regulation 16(1), was invoked as in the opinion of the Principal Commissioner of Customs (the undersigned), it was found to be an appropriate case, where immediate action was necessary. In terms of sub-regulation (2) of Regulation 16, opportunity of hearing was granted to the CB, and the same has has been availed. Further, orders issued under Regulations 16(1) and 16(2) of the CBLR, 2018 are temporary measures and final order is to be issued under Regulation 17 of CBLR, 2018 after issuance of show cause notice and and due inquiry.

4. Regarding the alleged violation of Regulation 10(e) of the CBLR, 2018, the CB has contended that the documents such as IEC number, GST number and identity of importers have been checked and collected by them from the Importer prior to filing the Bill of Entry for import; that these documents filed by the importer are neither disputed nor contradicted by the department; that the investigation too has not pointed any deficiency in this regard to doubt the Customs Broker for any lack of diligence. The CB further contended that any illegal act on the part of Importer leading to violation of Customs Act, 1962 are totally independent in nature and do not cast liability on the broker; that in the absence of prior knowledge, intelligence about the goods and any other mis-declaration by importer, the Broker was not in a position to ascertain the correctness of the nature of the goods declared by the importer; that Customs broker cannot be held responsible for the acts of the importer unearthed by investigation; that the importer is solely liable for his acts and so, dragging the Customs Broker for the offence of illegal import, if any, by importer of goods is by itself wrong, unjustifiable and blatantly illegal; that the Customs Broker is merely an Agent for the purpose of clearance of goods and discharges his limited duties on fixed fees; that the Customs Broker has not imparted any information to the importer, which has been found to be incorrect.

However it is noticed from the record, that during the search conducted by Delhi Customs (Preventive) team, it was revealed that the registered premises of the importer mentioned in Bill of Entry, Bill of Lading and IEC those addresses of the importer were not in existence or those are not related to the importer. Further, search of premise mentioned in the passport of the importer was also conducted by Bengaluru Customs (Preventive) team, and again it was found that the subject premises were not related to M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) and no person by name A. S. Faiz Hussaini (Proprietor of M/s. ESS ESS Worldwide Cargo & Logistics INC) is/was living therein. Hence, there is no force in the CB's submission. It establishes that the CB had no interaction at all with the genuine importer and thereby could never impart any information at all. Thus, it appears that the CB have not worked diligently in the clearance of the said shipment for import consignments and contravened the provisions of Regulation 10 (e) of the CBLR, 2018.

5. Regarding the alleged violation of Regulation 10(n) of the CBLR, 2018, the CB have contended that the duty of a Customs Broker is confined to obtaining the relevant KYC documents and he cannot be held responsible for not physically

verifying the address of the exporter/importer; that the existence of address was verified by the independent and known source and this fact has been observed during the course of investigation and incorporated para 7 in the present Order; that the declared address of the CB is required to be verified by the Customs Broker only with reference to documents and not physically; that various Tribunal judgments support the basis on which the verification is to be made for its compliance. I find that Ms Seema K Chowdhury, Branch Manager of M/s Siddhesh Logistics in her statement recorded on 16/12/2021 under section 108 of the Customs Act, 1962, inter alia stated that she got the documents from Shri Laxman Shirke who introduced her with the importer through mobile phone; that she never met the importer face to face; that she got the address of the importer at Delhi verified through her known person Shri Sanjay Singh residing at Delhi. Further, during the course of investigation, the search conducted by Delhi Customs (Preventive) team revealed that addresses of the importer were not in existence or those are not related to the importer. Also, search of premise mentioned in the passport of the importer was also conducted by Bengaluru Customs (Preventive) team, and again it was found that the subject premises was not related to M/s. ESS ESS Worldwide Cargo & Logistics INC (IEC No. BOUPA3926C) and no person by name A. S. Faiz Hussaini (Proprietor of M/s. ESS ESS Worldwide Cargo & Logistics INC) is/was living therein. Hence, there is no force in the CB's submission. Statement of Ms. Seema K Chowdhury, Branch Manager of M/s Siddhesh Logistics is contradictory to the facts on record. The CB has accepted the documents from a person who was neither related to the importer nor was an employee of the importer. This being the case, the whole purpose of KYC is defeated i.e. to ensure that the CB has received and verified the KYC documents submitted by the genuine client. In addition, the genuineness of the client is to be verified by using reliable independent means. Thus it appears that the CB has contravened the provisions of Regulation 10 (n) of the CBLR, 2018.

6. Regarding the alleged violation of Regulation 10(q) of the CBLR, 2018, the CB have contended that at every stage of enquiry and investigation cooperation has been extended to the authorities as a matter of obligation; that non-appearance before the investigation officer on certain dates was due to the pandemic corona virus or other genuine reasons; that the statements of various employees recorded during the course of investigation are proof by itself that full cooperation was extended to the department.

It is noticed that during the course of investigations, summons dated 24.12.2021 & 18.01.2022 were issued to Ms. Jayashree Tusar Diwate, license holder of M/s Siddhesh Logistics (Customs Broker 11/2493) but she did not appear before the authorities in compliance of the above summons. The CB has not produced any correspondence with the investigating agency regarding non-appearance before the investigation officer. Thus it appears that the CB has contravened the provisions of Regulation 10 (q) of the CBLR, 2018.

7. Regarding the alleged violation of Regulation 13(3), 13 (4) and 13 (7) of the CBLR, 2018, the Customs Broker contended that while employing the persons to assist the Customs Broker, due verification was done with respect to respective Aadhar Card number and the prescribed minimum qualification of the employees; that the Department has not brought out any specific instances where Customs Broker has not caused verification before deploying the persons; that the required procedure has been followed by them; that during the functioning, the procedure has been strictly followed and adhered to and only those employees have been signing the documents viz. Bill of Entry and Shipping Bill who have been issued Customs Passes in the format 'G' and 'F' under CBLR.

However, Ms Seema K Chowdhury, Branch Manager of M/s Siddhesh Logistics in her statement recorded on 16/12/2021 under section 108 of the Customs Act, 1962, inter alia stated that being the branch head, she was responsible to verify the documents and she has been authorized by Ms. Jayashree Tusar Diwate (the then Propriertor and 'F' card holder) to transact Customs related work and document process. Thus it is observed that the License holder Ms. Jayashree Tusar Diwate had authorized Ms Seema K Chowdhury to carry out all the Customs related works on her behalf, whereas she did not have any Customs Pass issued under Section 146 of Customs Act 1962. Therefore, it appears that the CB has contravened the provisions of Regulation Sub-Regulation (3), (4) and (7) of Regulations 13 of CBLR 2018.

8. Regarding the alleged violation of Regulation 13(12) of the CBLR, 2018, the Customs Broker contended that there has been no lack of supervision on the part of Customs Broker and hence it was denied that there were any acts of omissions of the company's employees during their employment and conduct of business. I find that the Customs Broker M/s Siddhesh Logistics have placed the vital responsibility of verification of genuineness of client in the hands of an employee M. Seema K Chowdhury, who is not holding any customs pass and

thus is not entitled to do such customs work. Thus it appears that the CB has contravened the provisions of Regulation 13 (12) of CBLR 2018.

9. The CB relied upon the following judgement in their support :

(a) Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi [2017-TIOL-894-HC-DEL-CUS]

(b) Commissioner of Customs vs. Shiva Khurana [2019-TIOL-178-HC-DEL-CUS]

(c) M/s. Freight Link Logistics (Customs Broker) Chennai Vs the Commissioner of Customs, Chennai II [2022-TIOL-382-CESTAT-MAD].

(d) M/s. Perfect Cargo and Logistics Appellant Vs. Commissioner of Customs (Airport& General) [2021-TIOL-63-CESTAT-MUM]

I find that ratio of the judgement relied upon by the CB is not applicable in the instant case as the Customs Broker M/s Siddhesh Logistics appears to have failed in verifying the KYC details and antecedents of the importers as the registered premises of the importer available on records were either not found or found not related to the importer and the Customs related work is dealt by an employee who is not an authorized customs pass holder.

10. In view of the above facts stated above, it appears that the Customs Broker is Liable for their acts of omissions and commissions leading to contraventions of the provisions of CBLR, 2018, which amounts to breach of trust and faith imposed on the CB by the Customs. The Customs Broker M/s. Siddhesh Logistics (CB no. 11/2493) have therefore, prima-facie, failed to fulfill their responsibilities as per Regulation 10(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of Customs Brokers Licensing Regulations, 2018.

11. My consideration in the instant case is limited to determining whether the continuation of suspension of the Customs Broker License is warranted or otherwise in light of the material of the record. Whether or not the individual charges hold will be the subject matter of detailed inquiry under Regulation 17 of CBLR, 2018 but there is enough prima facie material on record to apprehend that charges are sustainable. All the charges sustain for the time being and can form grounds for continuation of the order of suspension.

12. Accordingly, I pass the following order: -

ORDER

01. 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 M/s. Siddhesh Logistics, CB no. No. 11/2493 (PAN No. AELFS7870P) vide Order no. 03/2022-23 dated 08.04.2022 shall continue pending inquiry proceedings under Regulation 17 of CBLR, 2018.

02. 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.

26/5/2022

(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai – I.

To,

M/s. Siddhesh Logistics, (CB No.11/2493)
(PAN No. AELFS7870P) [Previously having PAN No. AISPD7308Q]
No. 1602, Kailash Tower,
Shiv Shristi Complex, Nahur Link Road,
Mulund (West), Mumbai – 400080

Copy to:

1. The Principal/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. The Pr. Commissioners / Commissioners of Customs Mumbai I,II,III Zone
3. The Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva.
4. CIU's of NCH, ACC & JNCH.
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