



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

F. No. S/8-02/2021-22 CBS

Date: 06.09.2021

E-office F. No.CUS/951/2021-CBS

DIN NO.:-

Order No. 18/2020-21

M/s Kavita D. Patil (PAN No.AMDPP9032E) 11/1444, (hereinafter referred to as the Custom Broker or CB) holding CB license no. No. CHA/01/BPL/2007 issued by Bhopal Commissionerate, is operating in Mumbai Customs Zone I, II and III under Regulation 9(2) of the Customs House Agents Licensing Regulations, 2004 [Now 7(3) of Customs Broker Licensing Regulations, (CBLR) 2018].

2. On the basis of the intelligence was received by SIIB (Import), Mumbai. One container No. HDMU6560935 imported vide Bill of Entry No.9741874 dated 22/01/2019 by one M/s Om Mauli Enterprises (IEC 0316947474) through Customs Broker M/s Kavita D. Patil,(CHA No. 11/1444) was put on hold by SIIB (I) for examination. The said Bill of Entry was filed against Invoice No. LP1821 dated 03/01/2019 of supplier, M/s Gaungzhou Holyland Group Inc. with declared assessable value of Rs.31,79,151/- and duty paid thereon as Rs.8,93,341/-.

3. Brief facts of the case:-

On the basis of the inputs of intelligence, the subject Container No. HDMU6560935 was examined by the ICD Officer, Mulund. During the examination the goods were found to be contained in 615 packages bearing various makings such as PP, VK. ANM etc. The packages were segregated according to the said packages, some discrepancies were found in respect of the quantity of goods found during examination vis-a-vis the quantity declared in the packing list of the subject Bill of Entry. Further, some of the rolls of fabric were found as 68" whereas the width of the fabric rolls was declared as 58" in the Bill of Entry & The scrutiny of the import documents such as packing list and invoice in was seen the due to a totalling mistake with regards to the dimensions of the 615 rolls in the packing list, the total quantity of the goods declared was incorrectly mentined as 60277 yards. However, on totalling the

dimensions of each individual rolls of the packing list, the correct total came to 88944.60 yards.

4. SEIZURE AND PROVISIONAL RELEASE OF THE CONSIGNMENT.

From the examination of the consignment, scrutiny of the import documents and the perusal of the Textile Committee report, it is apparent that the importer had mis-declared the quantity and composition of the goods leading to mis-classification of the goods, and goods were seized vide Seizure Memo dated 18/02/2019, under provision of Section 110 (1) of the Customs Act, 1962.

Further, on the request of the importer M/s Om Mauli Enterprises, the goods were provisionally released by the competent authority in terms of section 110A of the Customs Act, 1962 on execution of bond of Rs. 34,87,208/- and furnishing of Bank Guarantees of Rs.30,98,415 & Rs.9,97,939/-.

5. VALUATION OF THE GOODS:-

Further investigation, there is a reasonable belief to doubt the truth and accuracy of the declared value, as the importer has mis-declared the quantity and classification of the impugned goods and hence, the value declared by the importer in the Bill of Entry cannot be relied upon as the same does not appear to reflect the actual transaction value.

5.2 In view of the above, the value declared in the Bill of Entry cannot be taken as the transaction value of the goods in terms of Rule 3 of the CVR, 2007 and the same appears liable to be rejected under Rule 12 of CVR, 2007.

5.3 As per available NIDB data, the transaction values of these items was retrieved and it is evident that the importer had made a declaration of import of single item viz. "Viscose Blended Fabric 58", but as per the reports of the Textile Committee, there were that one type of fabrics actually imported with different classification and applicable duty. As per textile Committee reports stated that the "textile Product may have multiple usages depending upon the user" and on the basis of their usages, it could be determined whether the goods were Upholstery Fabrics or other than Upholstery Fabrics. In the absence of any documents or end user certificate, the goods were considered as Upholstery Fabrics and, hence, the importer was not eligible to avail the notification benefit of "other than upholstery fabrics. Therefore, notification benefit is liable to be denied.

6. PENAL PROVISION APPLICABLE:-

From the investigation carried out and brought out here-in-above, it is evident that the imported goods do not correspond in respect of the quantity, value and classification with the entries made under the provisions of the

Customs Act, 1962 is as much as the goods were declared as 'Viscose Blended Fabrics 58' (other than Upholstery Fabrics), but upon testing more than one type of fabrics with different classification and quantity as the declared was found. The above have rendered the imported goods of re-determined value of Rs.50,12,933/-, liable for confiscation under Section 111 (1) & 111 (m) of the Customs Act, 1962.

7. The statement of Shri Sandeep Engawale, Director of M/s Om Mauli Enterprises, recorded on 13.03.2019 under section 108 of Customs Act, 1962 admitted that, it appears that before filing of the subject Bill of Entry, he was aware about the wrong invoice and packing list forwarded by the supplier.

7.2 However, he has not brought the same to the notice of either Customs Broker or Customs Authority. This is a deliberate attempt on the part of Shri. Sandeep Engawale to evade payment of appropriate Customs duty in relation to the impugned goods imported vide Bill of Entry No.9741874 dated 22/01/2019. Shri Sandeep Engawale had knowingly or intentionally made, signed or used declaration and documents which were false or incorrect with an attention to evade duty and violated the provisions of Customs Act, 1962.

8. The statement of Shri. Sunil Rao, Manager of M/s Kaviata D. Patil (Kardex No. R-886) was accepted that from the examination and the reports of the textile committee, it was apparent that the goods imported vide Bill of Entry 9741874 dated 22/01/2019 was mis-declared and misclassified. Shri.

8.2 Sunil Rao, stated that at the time of checking the Invoice and the Packing List, he did not calculated or crosscheck total length of the fabric rolls in packing list and he accepted that while filing Bill of Entry neither he noticed nor crosschecked the details mentioned in the Commercial Invoice and the packing list.

8.3 In this regard, it is clear that if the CB have not verified of imported goods & documents, he could not able to give proper advice to their clients. Thus the CB has failed to advise their client regarding the rules and regulations of Customs and allied acts to the exporters and therefore violated the provisions of Regulation 10(d) of CBLR, 2018.

8.4 From the above statement of Custom Broker, it was evident that while filling Bill Entry, the Customs Broker had neither noticed nor crosschecked the details mentioned in the Commercial Invoice and the Packing List which clearly established his negligence and his casual approach towards his duties as a Customs Broker. His claim that he did not calculate or crosscheck the sum of lengths of each roll in the Packing List and only verified the total quantity mentioned in the packing list with the invoice before filing the Bill of Entry with

the mis-declared quantity of 60277 yards as against the proper length of 88944.60 yards,

9. From the investigation in this case it is evident that:-

A Custom broker shall:-

(i) Regulation 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”.

In the instant case, as per statement of Shri Sandeep Engawale, Director of M/s Om Mauli Enterprises, recorded on 13.03.2019 under section 108 of Customs Act, 1962 admitted that, it appears that before filing of the subject Bill of Entry, he was aware about the wrong invoice and packing list forwarded by the supplier. However, he has not brought the same to the notice of either Customs Broker or Customs Authority. In this regard, it is clear that if the CB have not verified of imported goods & documents, he could not able to give proper advice to their clients. Thus the CB has failed to advise their client regarding the rules and regulations of Customs and allied acts to the exporters and therefore violated the provisions of Regulation 10(d) of CBLR, 2018.

(ii) 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”.

Whereas in the instant case, as per statement of Shri Sunil Rao, working Manager of the CB M/s Kavita D. Patil, recorded on 29.03.2019, working manager of the Custom Broker recorded on 19.04.2021 under section 108 of Customs Act, 1962 wherein he admitted that at the time of checking the Invoice and the packing list, he did not calculate or cross check total length of the fabric rolls in packing list and accepted that as the Customs Broker. However, he did not calculate or crosscheck the sum of lengths of each roll in the packing list and verify the total quantity mentioned in the packing list with the invoice before filing the Bill of Entry with the mis-declared quantity of 60277 yards as against the proper length of 88944.60 yards. It means CB not proper checked.

The CB appears to have contravened the provisions of Regulation 10(e) of CBLR, 2018 as they have failed to exercise due diligence to ascertain the correctness of the information comply with the provisions of the Customs Act, 1962. This is a huge revenue loss to the government. This type of revenue loss could not happen without the involvement of the Customs Broker. In the subject matters M/s Kavita D. Patil has failed to exercise due diligence to correctness of

information in respect of the importers, therefore, M/s Kavita D. Patil has violated the provisions of Regulation 10(e) of CBLR, 2018.

(iii) Regulation 10 (g) : “promptly pay over to the Government, when due, Sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client;

In the instant case, after investigation, it is clear that the imported goods do not correspond in respect of the quantity, value and classification with the entries made under the provisions of the Customs Act, 1962 is as much as the goods were declared as ‘Viscose Blended Fabrics 58” (other than Upholstery Fabrics) but upon testing more than one type of fabrics with different classification and quantity as that declared was found. Therefore, by not declaring the true and correct facts, at the time of import and subsequent to the clearance of the self-assessed imported goods before the Customs department, M/s Om Mauli Enterprises appear to have indulged in mis-declaration, wilful mis-statement, manipulation and suppression of facts with the sole intention to wrongfully evade payment of applicable Custom duties. Shri. Sunil Rao, Manager of M/s Kavita D. Patil has accepted that while filing Bill of Entry neither he noticed nor crosschecked the details mentioned in the Commercial Invoice and the Packing List which clearly established his negligence and his casual approach towards his duties as a Customs Broker.

(iv) Regulation 10(m): “A Custom broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay”.

In the instant case, , the container No.HDMU6560935 vide Bill of Entry No.9741874 dated 22/01/2019 importer by M/s Om Mauli Enterprises (IEC 0316947474) through Customs Broker M/s Kavita D. Patil. In the statement of Shri Sunil Rao, Manager of M/s Kavita D. Patil has accepted that while filing Bill of Entry neither he noticed not crosschecked the details mentioned in the Commercial Invoice and the Packing List which clearly established his negligence and his casual approach towards his duties as a Customs Broker. Further, he had failed to tally the correct quantity of the consignment from the packing list which pointed towards the incompetency towards the fulfilment of this obligations. Therefore, the CB has violated the provisions of Regulation 10(m) of CBLR, 2018.

10. In view of the facts stated above, I come to the conclusion that prima facie, the CB, M/s Kavita D. Patil (PAN No.AMDPP9032E) 11/1444 is liable for their acts of omissions and commissions leading to contraventions of the provisions under Regulations 10(d), 10(e), 10 (g) and 10(m) of the Customs Brokers Licensing

Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs. The Customs Broker M/s Kavita D. Patil (PAN No.AMDPP9032E] 11/1444 have, therefore, prima facie, failed to fulfill their responsibilities as per provisions of regulations of CBLR, 2018. Accordingly, I pass the following order:-

ORDER

8. I, Pr. Commissioner of Customs (General), hereby order for withdrawal of the permission granted to the Customs Broker, M/s Kavita D. Patil (PAN No.AMDPP9032E] 11/1444, to transact business in Mumbai Customs Zones I, II, III with immediate effect, being satisfied that the Customs Broker has prima facie not fulfilled their obligations as laid down under the provisions of Regulation Regulations 10 (d), 10(e), 10(g), and 10(m) of the Customs Brokers Licensing Regulations, 2018.

8.1 The Customs Broker may approach the Parent Commissionerate, i.e Bhopal Customs for further action including Personal hearing etc., if any, in the matter as the same is being forwarded to the Parent Commissionerate in terms of Para 5.2 of Board's circular No. 9/2010-Cus dated 08.04.2010 along with Investigation report and all Relied upon documents.

8.2 M/s Kavita D. Patil (PAN No.AMDPP9032E] 11/1444, is directed to surrender all the original Custom Passes issued to their employee/partner/director/Proprietor immediately.

8.3 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) 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.

To,

Pr. Commissioner of Customs (General),
Mumbai Customs Zone I.

(SUNIL JAIN)

1. M/s Kavita D. Patil (PAN No.AMDPP9032E] 11/1444,
Krishna Kanaiya Soc. Shop No.3
Plot No. 3, Sector 8,
Airoli, Navi Mumbai - 400708.
Ph. No.91-22-64221237.

Copy to:

1. The Chief Commissioner of Customs, Mumbai I, II, III Zone
2. All Commissioners of Customs, Mumbai I, II, III Zone.

Original
Reserve copy
Sunil Jain
R-886
8/9/2011

- B by
(E)
3. The Principal Commissioner of Customs (Preventive), R&I wing, NCH, Mumbai.
 4. The Asstt. Commissioner of Customs, Central Excise, Customs & Service Tax, Bhopal (M. P.).
 5. CIU's of NCH, ACC & JNCH.
 6. EDI of NCH, ACC & JNCH.
 7. ACC (Admn), Mumbai with a request to circulate among all departments.
 8. Airport (Admn) with a request to circulate among all concerned.
 9. Jawaharlal Nehru Custom House (Admn) (With a request to circulate among all Departments.
 10. SIIB(I), NCH/Mumbai, JNCH
 11. Mumbai Custom House Agent Association.
 12. Office copy.
 13. Notice Board.