



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

F. No. GEN/CB/190/2022-CBS

Date: 28.07.2022

DIN: 20220777000000010739

ORDER NO. 20/2022-23

M/s M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J) having office address at Torana Apartment, 1-A, Sahar Village Road, Andheri (E), Mumbai, 400 099, are holder of regular Customs Broker License No. 11/244, issued by the Commissioner of Customs, Mumbai under Regulation 10(1) of CHALR, 1984, (Now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. Pursuant to intelligence developed by SIIB(I) at Air Cargo Complex, Mumbai Customs Zone-III, investigation was initiated against importer M/s Firoza Movie International Enterprise along with Customs Brokers M/s M. D. Ruparel & Sons and M/s Charania Associates. Customs Broker M/s M.D. Ruparel & Sons (11/244) had filed Bill of Entry No. 5466407 dated 16.09.2021 on behalf of importer M/s Firoza Movie International Enterprise in which goods were declared as "Blank Cartridge 9mm Kaiser (Air Gun Pellets Dummy)" under CTH 93069000. Further, M/s Firoza Movie International Enterprise had already imported 3 consignments of blank cartridges vide Bills of Entry no. 3625478 dated 19.04.2021, 4368312 dated 18.06.2021 and 4963255 dated 07.08.2021 & total of 78,000 blank cartridges were imported by M/s Firoza Movie International Enterprise.

3. As per Chapter 93 of the Schedule 1- Import Policy, all items imported under CTH 9306 are restricted. However, policy for import of "Air Gun Pellets Dummy" is "Free". The importer has deliberately mis-declared the goods as "Air Gun Pellet Dummy" to circumvent the restriction of import policy. Also Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs, also known as Arms Rules 2016, which mentions the requirement of license for arms and ammunitions for theatrical, film or television production, appear to have been violated. The importer had not produced any valid certificate for import of "blank cartridges".

4. The officers of SIIB(I) examined the goods imported vide Bill of Entry No.5466407 dated 16.09.2021 under Panchanama dated 03.11.2021 and


representative samples of the goods were drawn for testing purposes. The samples drawn were then forwarded to Central Forensics Science Laboratory (CFSL), Hyderabad for testing purposes. CFSL, Hyderabad vide letter dated 09.03.2022 opined that "When a blank cartridge is fired, high pressure gas is discharged from the case and progresses down the barrel. The effect of the superheated high pressure gas as well as unburnt particles of propellant can cause fatal injuries and can endanger human life." Thus the goods were dangerous in nature and could cause fatal injuries to human life.

5. Statement of Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise was recorded on 11.02.2022 under Section 108 of Customs Act, 1962 wherein she *inter-alia* stated that M/s Firoza Movie International Enterprise had been importing mostly blank cartridges for film and movie shooting from 2021; that she did not think that license was required for import of blank cartridges; that these blank cartridges produce sound when fired and nothing emanates from the gun; that she met CB M/s M. D. Ruparel & Sons in their office premises and agreed to pay Rs. 3,000/- per consignment in advance; that she had no idea why 'Air Gun Pellets Dummy' was written in the description of the goods i.e. "Blank Cartridges 9mm Kaiser" and it might have been changed by the Customs Broker as they did not seek confirmation from her after filing Bills of Entry.

6. The importer failed to explain how she had utilized the goods previously imported by her. The premises of M/s Firoza Movie International Enterprise were searched but no document related to the import of "Blank Cartridges" were found during search.

7. Statement of Shri Mahendra Ruparel, F Card Holder in M/s M. D. Ruparel & Sons, who had filed Bill of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 on behalf of M/s Firoza Movie International Enterprise, was recorded under Section 108 of Customs Act, 1962, wherein, he *inter-alia* stated Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise visited his office and told him that she wanted to import blank cartridges for movie shooting purpose and showed him her Identity Card of Stunt Artist Association and also showed previous Bills of Entry in which she cleared the goods; that the goods imported vide Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 were blank cartridges; that M/s Firoza Movie International Enterprise did not produce any license for import of 'Blank Cartridges'; that he was agreed with that goods had been mis-declared by importer & the changes in the description of the goods had been done on the request of the importer.

8. The above persons viz. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise, Shri Mahendra Ruparel, F Card Holder in M/s M. D.



Ruparel & Sons (11/244) and Shri Shailesh Kathe, G-Card Holder of M/s Charania Associates (11/950) were arrested on 25.05.2022 at 14:30 hrs under Section 104 of Customs Act, 1962 for committing offences under Section 132, and Section 135 (i) (C) of the Customs Act, 1962 which is non-bailable and cognizable offence.

9. Based on the offence report, prima facie, it appeared that CB had violated Regulation 10(d) 10(e) and 10(f) of CBLR, 2018, therefore, it was apprehended that the Customs Broker may adopt similar *modus operandi* in future consignments and department cannot remain oblivious to the danger posed by such an eventuality. Accordingly, CB license no. 11/244 was suspended vide Order No. 14/2022-23 dated 23.06.2022 and CB was granted opportunity of Personal Hearing on 04.07.2022 at 12:00 Noon. On request of CB, PH was rescheduled at 14.07.2022 at 12:00 Noon which was attended by Authorized Representative of CB.

10. Personal Hearing & Written Submission

10.1 In pursuant to suspension order no. 14/2022-23 dated 23.06.2022, Shri Vijai Kumar Singh, Authorized Representative of CB M/s. Quick Clearing Agency attended the Personal Hearing on 14.07.2022 at 12:00 Noon and CB also submitted their written submission vide letter dated 12.07.2022.

10.2 During Personal Hearing, Shri Vijai Kumar Singh, Authorized Representative of CB stated that their license was suspended on the sole allegation that CB themselves added the words 'Air Gun Pellets Dummy' in description of the import of 'Blank Cartridges' relying on the statement of importer but actually whole description of the goods in B/E was declared as per request of the importer. In this regard, importer produced previous two Bills of Entry before CB that were previously handled and cleared by another CHA M/s Charania Associates with the same description. They prepared the Checklist based on description of the previous B/Es and only after approval of the importer. This is the case of September 2021 & the suspension was ordered after almost passing of nine months which is not an immediate requirement.

10.3 Customs Broker submitted that in the subject case SIIB had undertaken investigation in respect of goods covered by Bill of Entry No.5466407 dated 16.09.2021. Prior to this the importer had imported three consignments of identical goods. Though in those cases the assessment of duty was made by the system, the goods were cleared only after physical examination by the officers of customs.

10.4 CB submitted that it has been stated in the suspension order that importer has imported 'Blank Cartridges' in the guise of 'Air Gun Pellets Dummy' under B/E No.4963255 dated 07.08.2021 and B/E 5466407 dated 16.09.2021, import

of which is restricted under the Import Policy. A report received from CFSL, Hyderabad is relied upon in this case. It is seen from the suspension order that only a part viz. sl. No. 4 of the report is being referred and relied, while other 3 points i.e. 1 to 3 of the said report were not considered.

10.5 Further, in the invoice goods were declared as "Blank cartridges 9MM Kaiser". However, description of goods was given as "Blank cartridge 9mm Kaiser (Air Gun Pellets Dummy)" in the bill of entry. The amplification 'Air Gun Pellets Dummy' was made in the Bill of Entry as per the instructions of the Proprietor of the Importing firm and also on the ground that in past goods having identical description and amplification have been imported and were cleared by importer. In her statement Ms. Firoza Khatoon proprietor of the importing firm had sought to blame CB for amplifying the description of goods as "Air gun pellets dummy". As submitted above while handing over the import documents, the importer had also handed over the copies of past Bills of Entry which were not dealt by us for supporting her(importer) contention that goods are also known as "Air gun pellets dummy" and are freely importable. Further, after preparing check list, Custom Broker had sent the copy of check list to importer for its approval and had filed the bill of entry only after approval from the importer. Thus, it is evident that the blame put by the importer on the C.B. is false and contrary to the evidence on record. CB further stated that they had given the declaration of the goods as "blank cartridge" and the description "Air gun pellets dummy" was added by way of amplification. It is therefore not a case of mis-declaration of description of goods as alleged in the order of suspension.

However, CB has helped the importer to clear the goods without import license by amplifying the description as "air gun pellets dummy". In this regard, it is submitted that Customs Broker is not having any technical knowledge about arms and ammunition and relied on the instructions of the importer and the two Bills of Entry showing examination and clearance of the identical goods in the past.

11. Discussion and Findings:

11.1 I have carefully gone through the records of the case, laws, rules, regulations relevant to the case, oral and written submissions made by the CB through their Authorized Representative Shri Vijai Kumar Singh. The issue before me at present is limited to determine whether the continuation of suspension of the CB license in the instant case is warranted or otherwise in the light of the material evidence on record.

11.2 I find that the license of CB was suspended vide order no. 14/2022-23 dated 23.06.2022 based on the offence report received from the SIIB(I), Air Cargo Complex for violation of the provision of regulation 10(d), 10(e) and 10 (f) of the

CBLR, 2018 for the import of "blank cartridge" vide Bill of Entry No.5466407 dated 16.09.2021.

11.3 I find that the restricted goods i.e. 'Blank Cartridges 9mm Kaiser' were cleared by CB on behalf of Importer M/s Firoza Movie International Enterprise without License as per Rule 42 of Arms Rules 2016 which stipulates Licence for arms and ammunition for theatrical, film or television productions.

11.4 I have carefully perused submission of CB given vide letter dated 12.07.2022. I find that they have submitted that the goods declared in the invoice produced by importer were as "Blank cartridges 9MM Kaiser". However, description of goods was given as "Blank cartridge 9mm Kaiser (Air Gun Pellets Dummy)" during filing of bill of entry. The amplification 'Air Gun Pellets Dummy' was made during filing of the Bill of Entry as per the instructions of the Proprietor of the Importing firm and also on the ground that in past goods having identical description and amplification have been imported and were cleared by importer. This clearly indicates that Blank Cartridges had been cleared with amplification of the description of the goods. CB has helped the importer to clear the goods without import license by amplifying the description as "air gun pellets dummy". In this regard, they submitted that Customs Broker is not having any technical knowledge about arms and ammunition and relied on the instructions of the importer, which is unacceptable argument as "Blank Cartridges" and "Air Gun Pellets Dummy" are two words giving different colour to the goods. When the import documents did not mention "Air Gun Pellet Dummy", adding it in B/E by the CB shows that he somehow wanted to clear goods knowing well that they are restricted.

11.5 I have also perused the statements of Shri Mahendra Ruparel, F Card Holder in M/s M. D. Ruparel & Sons. I find that he has stated that the goods imported vide Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 were blank cartridge and M/s Firoza Movie International Enterprise did not produce any license for import of 'Blank Cartridges'. He was agreed that the goods had been mis-declared by importer and the change in the description of the goods had been done on the request of the importer.

11.6 I have also perused the statements of Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise. I find that she thought that license was not required for import of blank cartridges because these blank cartridges produce sound when fired and nothing emanates from the gun, hence these blank cartridges are not lethal. She had no idea why 'Air Gun Pellets Dummy' was written in the description of the goods i.e. "Blank Cartridges 9mm Kaiser". It might have been changed by the Customs Broker as they did not seek confirmation from her after filing Bills of Entry.

11.7 I find that CB was acquainted with the restriction of the Arms Rules, 2016 and Customs Act, 1962 in the import of Blank Cartridges 9mm Kaiser and he knowingly & intentionally in connivance with importer amplified the description of the goods to circumvent the policy restriction imposed on the import of Blank Cartridge for theatrical, film or television productions. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise has admitted that she was of the opinion that no license is required for import of Blank Cartridge for theatrical, film or television productions. Thus, it appears that CB neither advised her to comply with the provisions of Customs Act, 1962 and Arms Rules 2016 under which import license is compulsory for import of arms and ammunition for theatrical, film or television productions nor brought the non-compliance of the Arms Rules 2016 and Customs Act, 1962 by importer into the notice of concerned AC/DC of Customs. Thus, it appears that CB have violated Regulation 10(d) of CBLR, 2018.

11.8 Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 has admitted that she wanted to import blank cartridge for film and movie shooting and she was not aware that any license is required for import of blank cartridges. She has also disclosed that the addition of term 'Air Gun Pellets Dummy' done in the description by CB M/s M. D. Ruparel & Sons. However, CB have submitted that the amplification 'Air Gun Pellets Dummy' was made during filing of the Bill of Entry as per the instructions of the Proprietor of the Importing firm and also on the ground that in the past goods having identical description and amplification have been imported and were cleared by importer. Thus, it is evident that CB did not provided correct information to Importer that import of Blank Cartridges for theatrical, film or television productions requires Licence under Arms Rules 2016. Since it was the obligation of the Customs Broker to take reasonable steps to impart information regarding restriction/prohibition imposed on import of 'Blank Cartridges' but in contra CB and the importer have intentionally and willingly imported restricted goods i.e. "Blank Cartridge" by amplification of "Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. Therefore, it appears that Customs Broker did not exercise due diligence in import of Blank Cartridges on behalf of importer M/s Firoza Movie International Enterprise. Thus, it appears that CB M/s M. D. Ruparel & Sons have violated Regulation 10 (e) of CBLR, 2018.

11.9 Shri Mahendra Ruparel, F card holder in CB M/s M. D. Ruparel & Sons, has admitted in his statement that he was aware that goods were blank cartridges which are importable into India under a valid license issued under

Arms Rules, 2016. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 has stated that she wanted to import Blank Cartridge, however, she had no valid license but her CHA M/s M. D. Ruparel & Sons added 'Air Gun Pellets Dummy' in the description of goods. It is obvious that it was the obligation of CB to impart all information regarding the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016. The importer M/s Firoza Movie International Enterprise would have not risked importing Blank Cartridges without License if CB had not withheld information regarding restriction imposed vide Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs on import of Blank Cartridges for theatrical, film or television productions. Thus, it appears that CB M/s M. D. Ruparel & Sons have withheld information from importer with respect to Blank Cartridges imported vide B/E No. 4963255 dated 16.09.2021 and B/E 5466407 dated 16.09.2021. Therefore, it appears that CB have violated Regulation 10(f) of CBLR, 2018.

12. In this regard, I rely on the judgement of the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in Civil Appeal no. 2940 of 2008 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)"

In the instant case, it is evident that the CB's acts of omission and commission resulted into illegal import of the impugned goods.

13. The evidence on record clearly indicates that the CB was working in a negligent manner and was in violation of the obligations casted upon them under the CBLR 2018. It also appears that an attempt of fraudulent imports would have not been possible, if Customs Broker had fulfilled their obligation bestowed on him under relevant Regulations of CBLR 2018. Thus, it appears that the said CB have violated Regulation 10 (d), 10(e) & 10(f) of the Customs Brokers Licensing Regulations, 2018

15. Accordingly, I pass the following Order:

ORDER

15.1 I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (2) of CBLR, 2018]

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Order that the suspension of the Customs Broker Licence M/s M. D. Ruparel & Sons. (PAN No. AAFFM4798J) CB License No. 11/244 vide Order no. 14/2022-23 dated 23.06.2022 shall continue pending inquiry proceedings under Regulation 17 of CBLR, 2018.

16. 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.


(SUNIL JAIN)

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

To,

M/s M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J)
Torana Apartment, 1-A,
Sahar Village Road, Andheri (E),
Mumbai, 400 099

Copy to:

1. The Pr./ Chief Commissioner of Customs, Mumbai I, II, III Zone
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