



**OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS (GENERAL)
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
BALLARD ESTATE, MUMBAI - I**

F. No. GEN/CB/75/2024-CBS
DIN: 202405790C0000 999 F09

Date: 27.05.2024

**ORDER No. 17/2024-25
UNDER REGULATION 16 OF THE CUSTOMS BROKER LICENSING
REGULATION, 2018**

M/s. Hayatt Shipping Private Limited (CB No. 11/396 & PAN No. AACCH9033K), having office address at Office No 56, 1st Floor, Plot No 28/36, Keshavji Jadhavji Trust Bldg, Khadak Street, Israil Mohalla, Chinch Bunder, MUMBAI-400009 [hereinafter referred to as the Customs Broker/CB], is holding a regular Custom Broker License No. 11/396 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. An offence report dated 09.01.2024, followed by letter dated 18.3.2024 along with RUDs with respect to the role played by CB M/s. Hayatt Shipping Private Limited were received in this office from SIIB(I), NCH, wherein interalia it has been informed that:

2.1 A CPGRAM was filed by Sh. Sanjay R Chauhan on 13.11.2017, that certain importers allegedly involved in "clearance of Imported goods and non-filing of GST return after clearance." Acting upon the grievance, data provided by the complainant along with his grievance letter were scrutinized and it was found that there were 07 Bills of Entry pertaining to Mumbai Zone-I. Out of 7 Bills of Entry 02 Bills of Entry were filed by M/s Hayatt Shipping Pvt Ltd. (11/396) on behalf of M/s. Prakash Enterprises (IEC-0316519987) [hereinafter referred to as the Importer].

2.3. Statement of Shri Paresh Sonu Kathe, IEC holder of the firm M/s Prakash Enterprises was recorded on 07.03.2022 under Section 108 of the Customs Act 1962, wherein he interalia stated that M/s Prakash Enterprises where his name is mentioned as Director of the firm, does not belong to him; that he had never started any such firm; that he gave his AADHAR Card and PAN Card to his friend, Shri Tushar for getting a sim card and he(Shri Tushar) did fraud with him(Shri Paresh Sonu Kathe) and created the said firm; that he had also given statement in this regard in the year 2018 to anti-evasion unit of CGST situated in Thane Rural.

2.4 Shri Paresh Sonu Kathe has also filed a police complaint dated 13.03.2022 at Dombivli Police Station, regarding misuse of his personal documents.

2.5 During the course of investigation, two summons were issued to record statement of CB firm M/s. Hayyat Shipping P. Ltd (11 /396), however both the summons returned un-delivered. Shri M.A.M. Mukadam, G card with Power of Attorney holder was contacted on his number provided by Custom Broker Section, NCH, on which he informed that they have shifted their office to another place therefore summons returned un-delivered.

2.6 Statement of Shri Mukadam Mohd Arfat Mehmood, Director of CB firm M/s. Hayatt Shipping Private Limited was recorded on 05.09.2023 under Section 108 of the Customs Act 1962, wherein he interalia stated that M/s. Prakash Enterprises came to our contact through a common friend Mr. Mohammed Hussain Patni (Contact Number 9987031033); that they had cleared only two consignments of M/s. Prakash Enterprises covered under B/E no. 2079224 dated 13.06.2017 and 2726867 dated 04.08.2017; that M/s. Prakash Enterprises had authorized our CB firm vide letter dated 10.06.2017, to handle their customs related work and also provided all necessary documents for KYC such as IEC copy, Signature verification copy from Maharashtra Bank, Khadakpada Branch, Kalyan, AADHAR Card, PAN Card, Electricity Bill, Rations Card, Income Tax Return Copy of 2016-17, Service Tax Registration Copy etc; that they had sent an employee to check the address of the importer and found that firm was existing at mentioned address, also checked bank account details from Bank of Maharashtra, Khadakpada Branch, Kalyan and the Bank had also confirmed on their letter head and met with Shri Paresh Sonu Kathe at his office who came with Shri Mohammed Hussain Patni.

2.7 Bank of Maharashtra, Nariman Point, Mittal Court, Mumbai-400021 vide their letter dated 24.01.2018 had submitted that they do not have any account of M/s Prakash Enterprises or Shri Paresh Sonu Kathe.

3. From the facts of case, it appears that the CB M/s. Hayatt Shipping Private Limited. (11/396) has failed to comply with regulation 10 (n) & 10 (o) of CBLR, 2018, as amended.

3.1 The relevant regulation of CBLR, 2018, are produced below for reference:

- (i) *Regulation 10(n) states that '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”

- (ii) *Regulation 10(o) states that “inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days”.*

3.2 It appears from the statement dated 07.03.2022 of Shri Paresh Sonu Kathe, that M/s Prakash Enterprises is a dubious company created with forged documents. It has been noticed during investigation that personal PAN No. CBF7240E of Shri Paresh Sonu Kathe was mentioned on B/Es in place of PAN no. of the firm. Further, it was noticed that the GSTIN 27CBF7240E1ZS of said import firm was shown as, not migrated on GST portal. Also, IEC status on DGFT official website is shown 'deactivated', as on date. Further, Shri Paresh Sonu Kathe in his statement dated 7.3.2022, has denied the ownership of firm M/s Prakash Enterprises and had informed that he had lodged the police complaint in Dombivli Police Station, regarding misuse of his personal documents.

In his statement dated 26.10.2023, Sh. Mukadam Mohd Arfat Mehmood, director of Custom Broker has claimed that they had verified the bank account details of Bank of Maharashtra, Khadakbad Branch, Kalyan, however, Bank of Maharashtra vide their letter dated 24.01.2018 informed that they do not have any account of M/s Prakash Enterprises or Shri Paresh Sonu Kathe. Hence, it appears that CB has either connived in the said fraudulent import or has given wrong statement.

3.3 From record it has also emerged that CB has changed his address and had not intimated same to the CB Section as required under regulation 10(o) of CBLR 2018, which is a violation of the said regulation.

4. From the above facts, prima facie, it appeared that the Customs Broker M/s. Hayatt Shipping Pvt. Ltd. (PAN: - AACCH9033K), having Customs Broker Licence No. 11/396 failed to discharge his obligations as required under regulation 10(n) and 10(o) of CBLR, 2018. It is 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.

5. Accordingly, the Customs Broker licence no.11/396 of M/s. Hayatt Shipping Pvt. Ltd. (PAN: - AACCH9033K) was suspended vide Order No.11/2024-25 dated 02.05.2024 and opportunity of Personal Hearing was granted to the CB on 13.05.2024 at 12:30 PM.

RECORD OF PERSONAL HEARING & WRITTEN SUBMISSIONS OF THE CB

6. In pursuant to Suspension Order No. 11/2024-25 dated 02.05.2024, Shri Mukadam M. Arafat, Director of M/s. Hayatt Shipping Pvt. Ltd. attended Personal Hearing on 13.05.2024 at 12:30 pm and CB also submitted their written submission vide letter dated 13.05.2024.

During Personal Hearing, Representatives of CB reiterated their written submission dated 13.05.2024, key facts of which are mentioned below:

- i. The licence of Customs Broker can be suspended under Regulation 16 of CBLR 2018 only in 'appropriate cases' where 'immediate action' is necessary and an inquiry is pending or under contemplation. As per Regulation 17 a notice has to be issued within 90 days from the date of Offence Report. Even when statements of our Director were recorded in September & October, 2023, the department did not find it a fit case for initiating action against us under the Customs Act or under CBLR. Our licence is suspended almost 5 months after the offence report dated 9.1.2024.
- ii. Reliance on statement of Shri Paresh is misplaced because he conveniently blames other for alleged misuse of his Aadhar and PAN Card. His police complaint also has not resulted in any conclusive finding.
- iii. They produced on demand Authority letter issued by the importer in their favour, IEC, Aadhar, PAN, Electric Bill, Ration Card, IT return, Service Tax registration etc. of the Importer firm. The address was also physically verified. The bank had confirmed that the importer was maintaining a current account.
- iv. Personal PAN of the proprietor can be relied upon if the importer is a proprietorship firm. CB cannot be blamed if the import firm does not migrate to the GST portal or if the IEC is deactivated after the import.
- v. They were always available on phone and responded to the department without any delay. The office had to close down because the license was under suspension from 16.02.2021 up to 20.06.2023.
- vi. They relied upon the following judgement in support of their aforesaid claims:
 - a. Commissioner vs. National Shipping Agency -2008 (226) ELT 46 (Bom.)
 - b. Commissioner v. Burieigh International -2008 (226) E.L.T. 49 (Bom.)
 - c. Commissioner v. S.A. Dalal and Co.- 2008 (221) E.L.T. 488 (Bom.)

- d. East West Freight Carriers (P) Ltd. v. Collector-1995 (77) ELT 79 (Mad.)
- e. N.C. Singha and Sons v. Union of India -1998 (104) ELT 11 (Cal.)
- f. Babaji Shivram Clearing & Carriers Pvt. Ltd. v. Union of India — 2011 (269) E.L.T. 222 (Bom.)

DISCUSSIONS AND FINDINGS

7. I have carefully gone through the records of the case, the written submissions by the Customs Broker and the submissions made during the personal bearing. The issue before me at present is limited to determining whether the continuation of suspension of the CB Licence is warranted or otherwise in the instant case in the light of the material on record.

8. I find that the license of the Customs Broker M/s. Hayatt Shipping Pvt. Ltd (11/396) was suspended vide Order No. 11/2024-25 dated 02.05.2024 based on the Offence Report received from SIIB(I), NCH, Mumbai that the CB has failed to fulfil their obligations laid down under Regulation 10(n) & 10(o) of CBLR, 2018. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

9. I have carefully perused the written and oral submission made by CB wherein they have cited various judgements to substantiate that suspension of license is not warranted in the subject case. The most recent judgements quoted were:

Commissioner of Customs vs. National Shipping Agency -2008 (226) ELT 46 (Bombay High Court), wherein it was held that:

“Power of suspension is an emergent power to be used in those cases where it is required that CHA licence be immediately suspended - Very fact that alleged violation is of the year 2005 as the import had taken place in Sep. 2005 and order of suspension was issued on 30-10-2006 itself indicate that there is no emergency which required licence be suspended.”

Commissioner of Customs v. Burieigh International -2008 (226) E.L.T. 49 (Bombay High Court), wherein it was held that:

“Order of suspension passed seven months after the alleged misuse came to notice of Department - Considering passage of time between detection alleged misuse and order of suspension and failure to comply with Regulation 20(2) of Customs House Agents Licensing Regulations, 2004, Tribunal’s order setting aside order of suspension, upheld.”

(a) I find that in the present case the offence report has been forwarded to Customs Broker section vide letter 09.01.2024 followed by RUDs dated 18.03.2024 to take necessary action against CB, accordingly CB license has been suspended vide order no. 11/2024-24 dated 02.05.2024. Hence, the above cited cases by the CB are not relevant in the instant case as there is no delay in suspending the license from the date when offence report was received. Therefore, ratio of the judgement is not squarely applicable in the instant case.

(b) I also find that CB had closed down his office as his license was under suspension from 16.02.2021 to 20.06.2023 and available on his phone, but just merely being available on phone doesn't fulfil the obligation as stated in Regulation 10(o) of CBLR 2018, which is clearly violated by the CB.

(c) Further, the CB has mentioned that earlier also the CB firm was suspended from 16.02.2023 to 20.06.2023, which clearly shows that the CB is a habitual offender.

10. Under CBLR, 2018, it is evident that there are certain obligations cast on the Customs Broker under Regulation 10 which a Customs Broker shall comply with. These decide the very nature of Customs Broker's interaction with his clients and Customs and form the bedrock of the work of a Customs Broker. If these are overlooked as mere procedural requirements and minor contraventions, then the whole substance of CB's work stands nullified. Therefore, these may be termed as substantive requirements which a Customs Broker is bound to comply with. It is the responsibility of the CB to advise the **Exporter** to comply with provisions of the Act, other allied Acts and the rules and regulations thereof as laid down under CBLR, 2018. It is not difficult to foresee the adverse consequences that may arise if CB acts in a negligent manner.

11. I observe that the CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded. In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of Commissioner of Customs vs M/s K.M.Ganatra & Co - Civil appeal no. 2940/2008 has held that...

"the Customs House Agent (CHA) occupies a very important position in the customs house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies namely carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through

its agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies..."

Hence, in the instant case it is clearly brought out that the CB has violated regulation 10(n) & 10(o) of CBLR, 2018 and it is also a matter of fact that CB was earlier involved in similar offence for which his license was kept under suspension. Hence, I am of considered view that CB may involve in similar offence in future if his license remains operative. Therefore, the suspension of license ordered vide 11/2024-25 dated 02.05.2025 shall continue.

12. Accordingly, I pass the following order:

Order

I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (1) of CBLR, 2018 order that the suspension of Customs Broker licence of M/s. Hayatt Shipping Pvt. Ltd., PAN No. AAEFR3124L (CB No. 11/396) vide order 11/2024-25 dated 02.05.2024 shall continue, pending inquiry proceeding under Regulation 17 of CBLR, 2018.

13. 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 (General)
New Custom House, Mumbai-I**

To,
M/s. Hayatt Shipping Private Limited. (11/396)
Office No 56, 1st Floor,
Plot No 28/36, Keshavji Jadhavji Trust Bldg,
Khadak Street, Israil Mohalla,
Chinch Bunder, MUMBAI-400009

Copy to:

1. The Pr. Chief/Chief Commissioner of Customs, Mumbai Zone-I, II & III.
2. CIU's of NCH, ACC & JNCH
3. Pr. Addl. Director General, DRI, MZU
4. EDI of NCH, ACC & JNCH
5. BCBA, Mumbai
6. Office copy