



प्रधान आयुक्त (सामान्य) सीमाशुल्क का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

कस्टम ब्रोकर अनुभाग, नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई- I

**CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI - I.**

F.No. GEN/CB/541/2022-CBS

Order Date: 30.12.2022

DIN: 20230177000000208858

Issue Date: 02.01.2023

ORDER NO. 61/2022-23

M/s. Alcan Logistics LLP, (PAN: ABPFA3740H), having address registered at 414, 4th Floor, Swapnapurti CHSL, Mansarovar Complex, Veer Savarkar Road, Parksite, Vikhroli (West), Mumbai, Maharashtra - 400 086 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2114, issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013, [Now Regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report with respect to the role of the CB, **M/s. Alcan Logistics LLP** is received in this office from the Commissioner of Customs (Export), ACC, Sahar, Mumbai, wherein it is informed that M/s Dyna Biotech, having IEC 3113000157, (hereinafter referred to as the 'Exporter') having address registered at GAT No. 407/408, At Post Bhandgaon, Taluka Daund, Dist Pune, PIN - 412214 was engaged in unauthorised export of SCOMET items i.e. '220L Tetanus Fermenter' and 'Laboratory Fermentor' which were covered in 3D category of Appendix-3 of SCOMET list issued by DGFT and was allowed to be exported only against an export license.

3. To verify the export items 'Fermenters and their parts' falls under Special Chemicals, Organisms, Materials, Equipment and Technologies (hereinafter referred to as SCOMET) list, Appendix-3 of SCOMET List and DGFT's Notification No. 29/2015-20 dated 21.09.2017 was referred, wherein, under entry no. 3D00615 the item 'Fermenters and their components' are included in the SCOMET List. The entry no. 3D00615 Fermenters is reproduced below:

'3D00615 Fermenters:

1. Fermenters capable of cultivation of micro-organisms or of live cells for the production of viruses or toxins, without the propagation of aerosols, having a total internal volume of 20 litres or greater;
2. Components designed for such fermenters, as follows:-
 - a. Cultivation chambers designed to be sterilized or disinfected in situ;
 - b. Cultivation chamber holding devices; or
 - c. Process control units capable of simultaneously monitoring and controlling two or more fermentation system parameters (e.g. temperature, pH, nutrients, agitation, dissolved oxygen, airflow, foam control).

3.1 Technical Note

Fermenters include bioreactors (including single-use (disposable) bioreactors), chemostats and continuous-flow systems.'

It was also mentioned in the 1st Para of Appendix-3 that Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET)

list shall be permitted only against an export authorization issued in this behalf unless export is prohibited or is permitted without authorization subject to fulfilment of conditions, if any, as indicated under/against any specific category or item.

4. On the basis of above, past exports of the exporter were retrieved from the System (details as per Annexure-A), and it was revealed that the exporter had exported 'Fermenters and their parts' under 42 shipping bills between 21.09.2017 till 13.08.2020. The total FOB value for the above 42 shipping bills is Rs. 33,62,28,692/- and the exporter had received the Drawback amount of Rs. 59,68,936/- and IGST Refund of Rs. 1,30,03,086/-. Out of these 42 Shipping Bills, 4 Shipping Bills were filed by CB M/s Alcan Logistics LLP as detailed below:

| Sr. No | SB No. | SB Date | CB Name | Desc_GD01 | FOB Value (Rs) | DBK Value (Rupees) | IGST Amount Paid |
|--------------|---------|------------|-----------------|--|-------------------|--------------------|------------------|
| 1 | 3158463 | 25.06.2020 | Alcan Logistics | NC MEMBRANE TYPE CNP F-SN12, 10um, 25mm, wide mm | 710125 | 00 | 00 |
| 2 | 3408228 | 25.06.2020 | Alcan Logistics | PARTS OF PIPING & AUTOMATION | 91980.55 | 00 | 20722 |
| 3 | 3437611 | 26.06.2020 | Alcan Logistics | VESSEL 'O' RING & OTHERS | 16458 | 00 | 00 |
| 4 | 9932547 | 27.01.2020 | Alcan Logistics | PARTS OF PIPING & AUTOMATION OTHER DETAILS | 984635 | 17723 | 188865 |
| Total | | | | | 1803198.55 | 17723 | 209587 |

5. During the course of investigation, the statements of the following persons were recorded by the SIIB(X):-

5.1 Statement of CB

The Director Ms. Chaitali Lodya has authorized Shri Jitendra Rajaram Vichare, Operation Executive, CHA M/s Alcan logistics, (RUD-8 of SCN) and his statement was recorded on 22.09.2020, wherein he has stated that; till 22.09.2020, their office has done 06 shipment for M/s Dyna Biotech; that their responsibility towards Customs is, to be with Customs and assist the Customs with the required documents for the clearance and inform Customs office when anything which is done wrong by the exporter; that their responsibility towards exporter is to obtain KYC and do the verification. To get the authorization for the shipments to be done. Assist the exporter in the customs procedure; that on specifically being asked whether they have ever verified the product or parts manufactured in the factory and their uses, in reply they have stated in negative and stated that they have never verified the product or parts manufactured in the factory and also not verified the uses of the export product and their parts; that on specifically showing the product portfolio which was submitted by the exporter to this office wherein it is mentioned that 'Our equipment includes, high end Fermenters, Bioreactors, CIP/SIP system, inactivation/Biokill systems, Media tanks, Buffer tanks, Harvest tanks, Purification Tank, Micro filtration, Ultra Filtration system etc. which are being used for vaccine manufacturing for human, animals,

therapeutic proteins, Antibiotics, Probiotics, cell culture products etc. and was asked to confirm, in reply they have stated that they have gone through the Product Portfolio of the exporter and confirm that the exporter is manufacturing and exporting Fermenters and their parts and other products which are being used for vaccine manufacturing for humans, animals, therapeutic proteins, Antibiotics, Probiotics, cell culture products etc; that when specifically asked that you may be having the knowledge of customs procedure, Tariff, Public Notice, Circulars and Standing Orders issued from time to time by different agencies related to customs clearances for which they replied that they are having the knowledge of all the aspects for clearance of export and import; that on showing DGFT's Notification no. 29/2015-20 dated 21.09.2017 on the subject of Amendment in Appendix 3(SCOMET items) to Schedule-2 of ITC (HS) Classification of Export and Import Items, 2012, where in Sr. No. 3D006 speaks about Fermenters and their components which were included in the SCOMET list, in reply they have agreed and confirmed that Fermenters and their components are included in the SCOMET List; that when specifically asked to confirm whether the SCOMET items require license from the DGFT, they replied in affirmative and stated that as per their knowledge, if the product is coming under SCOMET list, then the license from DGFT is required for clearance of the same; that when specifically asked and asked to confirm whether M/s Dyna Biotech is exporting Fermenters and their components; that when specifically asked to confirm the export of Fermenters and their parts made by M/s Dyna Biotech, will require the export authorization for the export or not, in reply they have confirmed that the export of Fermenters and their parts made by M/s Dyna Biotech, will require the export authorization for the export; that when specifically asked during the exports have they ever informed the exporter regarding export authorization for their item of exports, they replied in negative and they have stated that they were not aware that the Fermenters and their components are falling under SCOMET list and the export of the said items require export authorization for the clearance of the same. The mistake has happened due to lack of knowledge and has happened inadvertently and lenient view may please be taken.

5.2 Statement of Exporter

The Director of M/s Dyna Biotech, Pune, Sh. Vinodkumar Rangarao Patil has authorized Shri Manik Dattatray Gidde, Manager Logistics, M/s Dyna Biotech,(RUD-11) and his statement was recorded on 23.11.2021, wherein he has stated that; Dyna Biotech was established in April 2013; that there are two directors in M/s Dyna Biotech; that the responsibilities of each of the directors in their firm is Manufacturing & commercial; that their equipment includes, Fermenters, CIP/SIP systems, Inactivation/Biokill systems, Media tanks, Buffer tanks, Harvest tanks, Purification Tanks, Micro filtration, Ultra Filtration systems etc. which are being used for vaccine manufacturing for humans, animals, therapeutic proteins, antibiotics, probiotics, cell culture products etc.; that total seven orders executed without SCOMET by Sea & Air authorization before 03.03.2020; that due to Covid, they were working from home & their Hon'able Directors was one of the member of Covaccine manufacturing at Bharat Biotech, Hyderabad, hence could not attend the summons; that they were neither aware about the SCOMET requirement for their product nor they were insisted upon for the said requirement by Customs officials; that only on receipt of an SCN dated 03.03.2020 received from the Customs, they were alerted for SCOMET approval requirement; that they had since then immediately initiated the SCOMET process at DGFT for their earlier & subsequent shipments since then; that all these subsequent shipments were voluntarily disclosed by him on their own purely as a compliance measure of all FTP regulation which clearly evidences and Authenticates the facts they had no intension of any FTP violations from their end as genuine and regular exporter; that M/s Dyna Biotech is exporting Fermenters and their components; that as per DGFT guideline, the

Fermenters having capacity 20 litre & above are applicable for SCOMET authorization; that they have received license in August 2020 (RUD-12) & onward exported four orders against the SCOMET authorization; that they have seven Export orders executed without SCOMET authorization before the case, after the case they have executed 04 exports in this regard with export authorization; that they have hired total 04 CBs for filing the export documents namely M/s. DHL logistics Pvt/. Ltd., M/s. Sun Impex clearing & shipping, M/s. Aradhya Export import Consultant & M/s. Sunmeet logistic Pvt. ltd; that they were not informed by any CBs in this regard; that after the case, they have exported the Fermenters as per SCOMET Licences issued by DGFT, New Delhi; that they were not aware about the SCOMET requirement to their product; that erroneously they have exported the goods without SCOMET authorization; that the benefit is also liable for restricted goods; that there is no as such revenue loss to the government; that they trust our view and our current submission in a more practical approach & not to penalize a genuine & regular exporter like him who are in the industry since 2013 & still exporting bringing in valuable FOREX to the Exchequer; they now earnestly request for good self not to initiate any penal action & request for a lenient view for the sole reason the lapse on our part was only out of ignorance & not deliberate.

6. Role of exporter and all concerned in clearance of export consignments as per above mentioned Table of SCOMET Items:

6.1 M/s Dyna Biotech., has got their export shipment of SCOMET items cleared without having any export authorization of Appendix. -3 (SCOMET List). The exporter has taken export authorization from DGFT in the month of August, 2020, before that the exporter has not taken required export authorization in complying with the provisions of Appendix-3 as well as all provisions of export of SCOMET items and thus liable themselves for penal action under the provisions of Customs Act, 1962

6.2 Role of (Customs Broker) M/s Alcan logistics: The statement of Shri Jitendra Rajaram Vichare, Operation Executive, CB M/s Alcan logistics was recorded under section 108 of the Customs Act, 1962 on 22.09.2020 wherein it has been noticed that neither the CB advised his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, nor he brought the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Moreover, it has been noticed that the customs broker was not even updated with the provisions / guidelines of the export of SCOMET items

7. It is an undisputed fact that the noticee exporter failed to obtain authorization for export of SCOMET items. It is clear that the goods are covered under the SCOMET list and the exporter, themselves, have approached DGFT for authorization, after the SCN was issued. The CB knew that fermenters are covered under Appendix 3 of the notification in force. There is nothing on record to show that they approached Customs to examine the feasibility of whether the goods are covered under the SCOMET list. Undoubtedly, the restricted goods were exported without obtaining authorization. Obviously, the CB was aware that fermenters and their components are covered under the SCOMET list. Thus, they failed to diligently perform their roles and responsibilities. Thus, it is clear that they had not advised their clients to follow the extant provisions of law and facilitated clearance of the goods on behalf of the exporter in the absence of the export authorisation.

8. Further, it is established from the facts/ evidence of the case that Noticee was having prior knowledge that the impugned goods were SCOMET items and same can only be permitted for export subject to authorization issued by DGFT. It is on record and also admitted by the Noticee in his statement recorded on 22.09.2020, under Section 108 of Customs Act, that they were having knowledge of customs procedure, Tariff, Public Notice and Standing Orders issued time to time by different agencies related to customs clearance. It implies that they were not ignorant of the law. Further, it is settled law that ignorance of the fact can be excused but not of law.

9. Relevant provisions of law applicable in this case:

Regulation 10 of CBLR, 2018: Obligations of CB-

9.1 Regulation 10(a) of CBLR, 2018: *A Customs Broker 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;*

As per the statement of Shri Manik Dattatray Gidde, Manager Logistics, M/s Dyna Biotech recorded by SIIB(X),ACC, they authorized 4 CBs for filing the export documents namely M/s. DHL logistics Pvt/. Ltd., M/s. Sun Impex clearing & shipping, M/s. Aradhya Export import Consultant & M/s. Sunmeet logistic Pvt. ltd. The exporter did not mention the name of M/s Alcan Logistics LLP(CB No. 11/2114) as authorized CB. Thus, the CB has violated Regulation 10(a) of CBLR, 2018.

9.2 Regulation 10(d) of CBLR, 2018: *A Customs Broker shall 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;*

As per the statement of Shri Manik Dattatray Gidde, Manager Logistics, M/s Dyna Biotech recorded by SIIB(X),ACC, they stated that they were not informed by any CBs about SCOMET authorisation. Further, the CB M/s Alcan Logistics LLP did not bring the matter to the notice of the Deputy/Asstt. Commissioner of Customs. Thus, the CB has violated Regulation 10(d) of CBLR, 2018.

9.3 Regulation 10(e) of CBLR, 2018: *A Customs Broker shall 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;*

The CB in his statement before SIIB(X), ACC nowhere mentioned their efforts to ascertain whether the exported items fall under SCOMET list and the export of the said items requires export authorisation. If the CB had taken efforts to ascertain the correctness of ITC-HS code of exported items, the unauthorised export would have not been taken place. Thus, the CB has violated Regulation 10(e) of CBLR, 2018.

9.4 Regulation 10(m) of CBLR, 2018: *A Customs Broker discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;*

As per statement of Shri Jitendra Rajaram Vichare, Operation Executive, CHA M/s Alcan logistics recorded by SIIB(X), ACC, they were not aware that the Fermenters and their components were falling under SCOMET list and

the export of the said items requires export authorization for the clearance of the same; that the mistake has happened due to lack of knowledge. This is evident that the CB is not efficient to perform his duties towards Customs and their clients.

The CB failed to discharge his duties as a Customs Broker with utmost speed and efficiency as it was the duty of the CB to declare the correct description of the goods while filing the shipping bills and bring all the facts to the customs authorities. Thus, the CB has violated Regulation 10(m) of CBLR, 2018.

10. From the above facts, it appears that prima facie, Customs Broker M/s. Alcan Logistics LLP (11/2114) has violated Regulation 10(a), 10(d), 10(e) & 10(m) of CBLR, 2018. It is apprehended that the Custom Broker may commit similar offence in future consignments and department cannot remain oblivious to the danger posed by such an eventuality.

11. Accordingly, I pass the following Order:

ORDER

11.1 I, Principal 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 of M/s Alcan Logistics LLP (11/2114) with immediate effect, being fully satisfied that the Customs Broker has prima-facie not fulfilled their obligations as laid down under Regulation 10(a), 10(d), 10(e) & 10(m) of CBLR, 2018.

11.2 However, I offer the Customs Broker M/s Alcan Logistics LLP (11/2114) an opportunity of personal hearing on 12/11/2023 at 11:30 am PM through video conferencing facility. Any written representation against this order should reach the undersigned before the date of hearing.

11.3 M/s Alcan Logistics LLP (11/2114), [PAN No. ABPFA3740H] is directed to surrender all the original Custom Passes issued to their employee/partner/director/Proprietor immediately.

11.4 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.

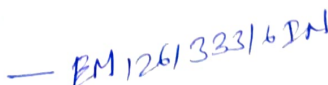


(SUNIL JAIN)

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

To,

M/s Alcan Logistics LLP,
414, 4th Floor, Swapnapurti CHSL,
Mansarovar Complex,
Veer Savarkar Road, Parksit,
Vikhroli (West), Mumbai,
Maharashtra - 400 086

 — PM 126/323/62M

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