



OFFICE OF THE PR. COMMISSIONER OF CUSTOMS
(GENERAL),
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
BALLARD ESTATE, MUMBAI - 400 001.
Email-Id: cbsec.nch@gov.in

F. No. GEN/CB/506/2024-CBS

Date: 09.12.2024

DIN: 20241227000000823888

SHOW CAUSE NOTICE NO. 65 /2024-25**ISSUED UNDER REGULATION 17(1) OF CBLR, 2018**

M/s Aries Cargo Movers (PAN Based License No. ABAFA0426HCH001), having registered address: 8th floor, Office No. 801, Crystal Plaza, Guru Hargovindji Road, Opp Solitaire Corporate Park, Chakala, Andheri (East) Mumbai 400093 (hereinafter referred to as the Customs Broker/CB) is holding Customs Broker License No. (11/1774), issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013 erstwhile {now Regulation 7(2) of CBLR, 2018} and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence report issued by DC/CIU, JNCH, Nhava, Sheva dated 10.09.2024 was received in CB Section, NCH, Mumbai through Official e-mail of CIU, JNCH, Nhava Sheva Zone-II, wherein, inter-alia, the following were informed:

2.1. CIU, JNCH is investigating two cases of import of goods vide BE Nos. 3730722 & 3729714 dated 29.05.2024 with description of goods as Process Oil-40(For Industrial Use Only).

2.2 The importer M/s. Raj Traders and M/s Global International filed the Bill of Entry No. 3729714 and 3730722 respectively both dated 29.05.2024 for import of goods having description as 'Process Oil - 40' and classified under CTH 34031900 having a duty structure of BCD 7.5%, SWS 10% and IGST 18% i.e. total duty @ 27.735%. For the said Bill of Entry, assessment was not prescribed and examination was ordered by Risk Management System (RMS). Further, the RMS system instructed for 100% examination for concealment, it further instructed for the drawal of the requisite sample for testing in order to ascertain classification, valuation, nature and composition of the goods.

In view of the same, the said Bill of Entry was sent for examination on first check basis on 07.06.2024 with an order to draw and forward representative sample for testing of the goods having the following testing parameters:

1. *Nature and composition of goods*
2. *Description*
3. *Initial boiling point*
4. *Final boiling point*
5. *Content of base oil*
6. *percentage of volume (including loss)*
7. *Flash Point*
8. *Please give specific comments that goods are other than transformer oil.*
9. *whether base oil or otherwise, it is other than light oils and preparations, solvents (125/240, 60/80, 50/120, 145/205) IS 91475, Kerosene (IS: 1459/IS:1571), kerosene intermediate (IS 17793), Gas oil (IS 17789), Vacuum gas oil (IS 17792), light diesel*

oil (IS: 15770), automotive diesel fuel not containing bio diesel (IS: 1460), diesel blend (IS: 16531) and HFHSD fuel (IS: 16861).

2.3. Thereafter, based upon the clarification dated 24.07.2024 made by the Docks officer, the goods were examined by the Docks Officer on 10.06.2024 and 11.06.2024 and accordingly, two sets of representative samples were drawn by extracting small portion of samples each from all the 20 containers, ensuring that representative sample represents the entire lot, and the same was handed over on 12.06.2024 to Central Revenues Control Laboratory (CRCL), Jawaharlal Nehru Custom House (JNCH) for testing as per the above-mentioned parameters vide Test Report No. 177 and 178 dated 10.06.2024. The CRCL, JNCH a government approved lab, submitted its report dated 15.06.2024, which is as follows:-

"The sample as received is in the form of yellowish oily liquid. It is composed of mixture of hydrocarbon more than 70% by weight having following constants:

Density at 15 degree Celsius = 0.8530 gm/ml.

Flash Point (COC) = 230.10 degree Celsius

Kinematics Viscosity at 40 degree Celsius = 30.78 Cst

Kinematics Viscosity at 100 degree Celsius = 5.55 Cst

Ash Content = NIL

Total Acid Number (TAN) = NIL

On the basis of above analytical findings, the sample under reference has the **characteristics of Base oil (IS: 18722: 2024)**, Rest of the queries raised are not relevant to the sample under reference. Sealed remnant sample returned."

2.4. Vide the above-mentioned Test Report, the CRCL, JNCH reported that the goods are having the characteristics of Base Oil (**IS:18722:2024**) whereas the importer had declared the goods as "Process Oil-40" and had classified under CTH 34031900 under self-assessment. The importer could not submit any Certificate of Analysis (COA) or related documents mentioning the chemical properties of the imported goods in support of CTH **34031900**. Therefore, prima facie it appeared that goods have been mis-declared by the importer in terms of description & classification.

2.5. As per the CRCL test report, the goods have been found as 'Base Oil' which is classifiable under CTH 27101971 having a duty structure of BCD 5%, SWS 10% and IGST 18% i.e. total duty@24.49. For Valuation, import data of Base Oil imported from UAE was viewed in ICES system for the month of May and June 2024. As seen from import data, Base Oil has valuation ranging from USD 525 to USD 1440 per MTS with an average price of USD 983.52 per MTS. Under the present Bill of Entry, importer has declared the unit price as USD 430 per MTS which is much lower than the average import price of Base Oil seen from Import data. Therefore, it appears that the goods have been mis declared in terms of classification as well as valuation to evade the payment of applicable import duty. On the pretext of which in response to the query raised by the assessing officer, the importer has agreed for value loading and reclassification of the goods. Thus, the importer has clearly accepted that they have mis-declared the impugned goods by classifying them under CTH 3403 instead of CTH 2710 and also under valued the said goods to avoid legitimate Customs duty.

2.6. Further, it appears that the filing of Bill of Entry in second check basis under Chapter

34 have been done wilfully to avoid the rigors of Chapter 27 i.e. to avoid the mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022.

2.7. However, the Appraising Group 2 (C-F), JNCH has highlighted the modus operandi to National Customs Targeting Centre (NCTC), Mumbai and Special Investigation and Intelligence Branch (Import), Jawaharlal Nehru Custom House vide letter dated 21.05.2024 that several importers are importing goods like Diesel, Adulterated Diesel by mis-declaring goods as 'Process Oil - 40' by classifying them under CTH 3403.

2.8. Meanwhile, the importer vide the letter dated 26.06.2024 addressed to Chairman, CBIC, alleging that the assessing officers have demanded bribe from the authorized representative of the importer. However, till date the importer has not submitted any proof of the same.

2.9. As per para 4 of the Office Order No. 138/2023 in respect of Re-Structuring of the Intelligence and investigation Units of JNCH, the Central Intelligence Unit (CIU) has been mandated to deal in the investigations with respect to the complaints and detection of irregularities involving loss of revenue where vigilance angle is also noticed. Hence, the case was transferred to the Central Intelligence Unit, JNCH on 26.06.2024.

2.10. The office of CIU, JNCH vide the emails had requested the importer multiple times to participate in the investigation and sampling process. However, in his every reply, the importer refused to participate in the sampling process and had sent baseless, threatening and provocative emails which were unwarranted.

2.11. Further, this office also requested the CHA firm M/s Aries Cargo Movers to join the sampling/examination process. Shri Hakeem Shaikh responded on behalf of the CB firm M/s Aries Cargo Movers stating that the importer has terminated the service of his CHA firm but he sent Shri Sagar Mhatre for assistance during the sampling/examination process. Accordingly, office of CIU, JNCH carried out the sampling/ examination process under panchanama dated 10.07.2024.

2.12. Thereafter, the said 20 samples drawn from each of the 20 containers were forwarded to Central Revenues Control Laboratory (CRCL), JNCH on 11.07.2024 for testing.

2.13. Further, it is submitted that this office has received the Test Reports in respect of all the twenty (20) containers and the findings of these test reports are reproduced as under:

"The sample after removal of adulterants meets the requirements of Automotive Diesel Fuel as per IS:1460:2017 except the Sulphur content. As per the definition of "adulteration" mentioned in the motor speed and High-speed Diesel (Regulation of Supply, Distribution and Prevention of malpractices) Order, 2005, the sample under reference is Adulterated Diesel Fuel."

The test reports also confirmed that the percentage of adulterants present in the sample varied from 2 to 3% only indicating purity of 97% to 98% Diesel fuel.

Further, Test Report also reveals that CRCL, JNCH conducted Tests-(i). Without removal of adulterants as received, and (ii). After removal of adulterants. In the first case, the FLASH points were found as between 6.6 to 16.6 (6.6, 7.6, 7.6,10.1,10.6,10.6,13.1,15.1,16.6& 16.6) Degree Celsius whereas in

second case (after removal of adulterants) the FLASH point was found between 45.5 to 60.1 (45.5, 46.9, 47.0, 51.0, 52.5, 52.5, 55.0, 55.1, 56.4 & 60.1) Degree Celsius. It may be mentioned that flash point of the samples in the second case (after removal of adulterants) confirms to the standards of High-Speed Diesel Oil.

2.14. In the view of the above test reports, it is evident that impugned goods are adulterated diesel fuel with only 2.0-3.0% of adulterants. It is clear that the adulterants have been deliberately mixed in diesel in order to camouflage the actual goods i.e. Automotive Diesel Fuel as per IS:1460:2017. Further, said diesel with more than 97% to 98% percent purity can straight away be used as Automotive Diesel Fuel in automobiles and in the open market as no further processing is required on diesel fuel/oil with purity 97 to 98% which can be used as such in Automobiles.

2.15 Further, it is submitted that based upon the outcome of the test reports of the CRCL, JNCH, it is evident that the subject goods are actually Automotive Diesel Fuel as per IS:1460:2017 (97%-98% purity) except Sulphur contents, adding that such Automotive Diesel Fuel does not require any further processing to be used as Automobile Fuel in the domestic market the moment the same are cleared from the Customs, whereas the Base Oil (which is the outcome of the initial test report dated 15.06.2024) requires further processing for its end use as a lubricant. This is further evident from the contents of the 06 CRCL, JNCH test reports which clearly indicate that after the removal of adulterants, the subject goods are established by CRCL, JNCH as Automotive Diesel Fuel as per IS:1460:2017 and thus, the mixing of adulterants appears to be an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/ Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002). Further, such adulterated Automotive Diesel Fuel is an environmental hazard and injurious to public health at large. Hence, allowing adulterated Diesel Fuel to enter into domestic market outside Customs Area will tantamount to violations of fundamental rights of the Indian citizen to use unadulterated Diesel fuel, adding that the use of adulterated Diesel fuel is also environmental hazard which is clearly banned under Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005.

2.16. Further, it is pertinent to mention that the initial CRCL test report dated 15.06.2024 in respect of the sample drawn by the Docks officer on 11.06.2024 stated that the goods meet the characteristics of Base Oil (containing more than 70% hydrocarbon by weight). However, the test reports received in respect of the samples drawn by CIU indicate that the goods are Automotive Diesel Fuel as per IS:1460:2017 instead of Base Oil. Such divergent results of samples drawn by Docks officer and sample drawn by CIU raise doubts regarding the genuineness of the initial sample submitted to CRCL, JNCH on 11.06.2024. Hence, it is also investigated that the matter in respect of the possibility of any replacement of the sample done in the process of forwarding the sample to CRCL, JNCH, as so much of variation in purity of Diesel Fuel is not possible even if one composite sample is made of samples drawn from all containers.

2.17. During the course of investigation, it was revealed that the representative samples were never drawn from the containers and the representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalawade and Shri Atul Mulay.

2.18. Further, Shri Sagar Mhatre vide his statement dated 13.08.2024 & 14.08.2024 had accepted that he had replaced the samples on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers and the same has been verified on scrutiny of the CCTV footages.

2.19. Further, their office is investigation three other cases of Smuggling of Adulterated Diesel Fuel, wherein the CB involved is M/s. Aries Cargo Movers and M/s. I.S. Machado. Further, it was learnt that Shri Hakeem Shaikh is managing the business of both the Customs Brokers M/s. Aries Cargo Movers and M/s. I.S. Machado and further, he is actively involved in the replacement of samples in all the above-mentioned cases.

2.20. Issuance of Summonses and Recording of statements:

2.20.1. Various Summons were issued to Sh. Hakeem Shaikh, Partner of M/s Aries Cargo Movers. In response, via email, he stated that he has some medical condition and therefore he is not able to visit the office of CIU. Now Sh. Hakeem Shaikh has stopped responding to the calls and is absconding since.

2.20.2. Various Summons were issued to Sh. Sagar Mhatre but he did not respond. However, during the search at his house on 13.08.2024, on 13.08.2024, he agreed to accompany CIU team and his statement was recorded on 13.08.2024 and 14.08.2024. Thereafter, Shri Sagar Mhatre has been **absconding** and is not responding to phone calls or summonses.

2.20.3. Summons was issued to Shri Rutik Nalavade (Employee of M/s I S Machado) and Shri Atul Mulay (Employee of M/s I S Machado) but all remained unanswered.

2.21. In view of the outcome of the search conducted and summons issues it appears that the person involved in the said case namely Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade are not cooperating with the investigation and are absconding.

3. Therefore, in view of the above said offence report, it is observed that there are gross violations of various provisions of CBLR, 2018 have been committed by the Customs Broker, the same is detailed as follows:

Regulation 10(d) of CBLR, 2018: *"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;"*

It is evident from the offence report that representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalavade and Shri Atul Mulay on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers and the same has been verified on scrutiny of the CCTV footages as mention above.

Further, it came to notice that there was an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/ Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002).

Further, to avoid the rigors of Chapter 27 i.e. to avoid the mandatory first check

procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, CB was abetted with importer to mis-declare and smuggle the impugned goods by classifying them under CTH 3403 instead of CTH 2710. Thus, it appears that there is clear connivance of CB with importer in this mis-conduct.

In light of the foregoing, it seems that the Customs Broker has not only failed to advise their client regarding relevant rules and regulations but has also neglected to inform Customs authorities about such deceptive practices, thereby knowingly aiding the importer in these illicit actions. Therefore, it appears that the Customs Broker has not adhered to the provisions of Regulation 10(d) of the Customs Broker Licensing Regulations, 2018.

Regulation 10(e) of CBLR, 2018: *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 of baggage;*

As the CB involved with their client to mix of adulterants in sample, hence it appears to be an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/ Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002).

Further, to avoid the rigors of Chapter 27 i.e. mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, the Customs Broker (CB) collaborated with importer to misclassify and illegally import the disputed goods by categorizing them under CTH 3403 instead of CTH 2710. This suggests a conspiracy between the CB and the importer in this serious misconduct.

Considering the aforementioned points, it appears that the CB and his employees failed to exercise proper diligence in carrying out their responsibilities by not providing correct information to the importer, consequently breaching the provisions set forth in Regulation 10(e) of the CBLR, 2018."

Regulation 10(f) of CBLR, 2018: *not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*

As the CB was aware that their client has mis-declared the impugned goods by classifying them under CTH 3403 instead of CTH 2710 to escape the mandatory first check procedure and sample drawing in light of Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022. Hence, it appears that the CB & their client have violated conditions laid down in said Public Notices, Therefore, the CB has failed to comply the Regulation 10(f) of Customs Broker Licensing Regulations, 2018.

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

The subject offence has clearly revealed that Shri Hakeem Shaikh is managing the business of the Customs Brokers M/s. Aries Cargo Movers and it has been observed that he is significantly engaged in the substitution of samples in the aforementioned instances and

facilitating the illegal entry of diesel into Indian territory as the said fact was clearly brought out in the statement of Sh. Sagar Mhatre and also caught in CCTV footage. Consequently, both the Customs Broker and his staff have not performed their responsibilities effectively, resulting in a breach of Regulation 10(m) of the Customs Broker Licensing Regulation 2018 (CBLR).

Regulation 10(q) of CBLR, 2018: *co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.*

Various summons issued to the person involved in the said case namely Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade have not cooperated with the investigation. Now, they are reported absconding as per offence report. Thus, it appears that CB has not co-operated with the Customs authorities and failed to comply the provisions of Regulation 10(q) of CBLR, 2018.

Regulation 13(12) of CBLR, 2018: *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.*

In the instant case, CB has failed to supervise his employees as Sh. Hakeem Shaikh was actively involved in an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/ Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002). Consequently, CB has failed to ensure the appropriate conduct of his employees in business transactions and may be held accountable for all actions or omissions of his employees occurring during their employment. Thus, in view of the above, it appears that CB has violated the provisions of Regulations 13(12) of CBLR, 2018.

4. Considering the observations made above, it is to mention 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 the context of trade facilitation, where an increasing number of goods are processed through Risk Management Systems without customs examination, the role of the Customs Broker (CB) has become even more critical in ensuring that the country's economic borders are effectively protected. the CB is actively connived with the importer in ingenious modus operandi and the mens rea to smuggle Diesel into the Indian Territory which is contrary to the restrictions/ Prohibitions imposed by the existing Laws, Rules and Regulations. As per offence report, it appears that there is violation of various regulations of the Customs Broker Licensing Regulations, 2018 by CB M/s Aries Cargo Movers and its employee, which has made them unfit to transact any business Mumbai Customs and also in other Customs Stations. Hence, by their acts of omission and commission, it appears that the CB has violated the provisions of Regulation 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of the CBLR, 2018 and thus rendered themselves for penal action under CBLR, 2018.

5. In view of the above, the CB, License held by M/s Aries Cargo Movers (11/1774) was suspended by the Commissioner of Customs(G) vide order dated 37/2024-25 dated 16.10.2024 and personal hearing was granted to the CB on 24.10.2024 at 12.15 PH. However, the CB, vide mail dated 24.10.2024 has requested to reschedule the date of PH, accordingly, PH was held on 14.11.2024 at 1.00 PM.

6. Further, the subject license vide no. 11/1774 pertains to M/s Aries Cargo Movers was ordered for Continuation of Suspension Vide Order No. 46/2024-25 dated 21.11.2024 under Regulation 16(2) of the CBLR, 2018.

7. Thus, in view of the above discussions in above paras, prime-facie, it appears that the Customs Broker has failed to fulfil their obligations under the provisions of Regulation 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of the CBLR, 2018 and contravened the same.

8. Accordingly, under the provisions of Regulation 17(1) of CBLR, 2018, Customs Broker M/s Aries Cargo Movers (11/1774) is hereby called upon to show cause, as to why:

I. The Customs Broker license bearing no. 11/1774 issued to them should not be revoked;

I. Security deposit should not be forfeited;

II. Penalty should not be imposed;

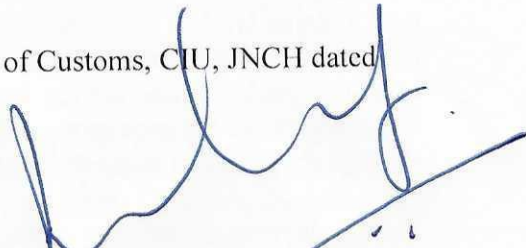
upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in above paras of this Show Cause Notice within 30 days from the date of issue of this notice.

9. They are directed to appear for personal hearing on the date as may be fixed and to produce proof of evidence/documents, if any, in their defence to the Inquiry Officer, **Sh. A. K. Dutta, Assistant Commissioner of Customs, General Comm'te, Mumbai Zone-I**, who shall conduct inquiry under Regulation 17 of CBLR, 2018. If no reply is received within the stipulated time period, it will be presumed that they have no explanation to offer and it will be presumed that they do not want personal hearing and the issue will be decided on the facts available on records.

10. This notice 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 provision of the Customs Act, 1962 and Rules/Regulation framed there under or any other law for the time being in force in Union of India.

The documents/records relied upon are as under:

- i. Offence Report received from Deputy Commissioner of Customs, CIU, JNCH dated 09.09.2024.


(RAJAN CHAUDHARY)
Pr. Commissioner of Customs (G)
NCH, Mumbai - I

To,

M/s Aries Cargo Movers (11/1774)
8th floor, office no 801, Crystal Plaza,
Guru Har Govindji Road,
Opp Solitaire Corporate Park,
Chakala, Andheri (East) Mumbai 400093

Copy to:

1. IO Sh. A. K. Dutta, Assistant Commissioner of Customs, General Comm'te, Mumbai Zone-I appointed to conduct inquiry under Regulation 17(1) of CBLR, 2018.
2. The Pr./Chief Commissioner of Customs, Mumbai Zone I, II, III.
3. CIU's of NCH, ACC & JNCH.
4. The Commissioner of Customs, Mumbai Zone I, II, III.
5. EDI of NCH, ACC & JNCH
6. BCBA.
7. Office copy.
8. Notice Board