सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकरअनुभाग,नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्डइस्टेट,मुंबई – I
BALLARD ESTATE, MUMBAI – I

F.NO. CUS/2712/2022-CBS Date: .12.2022

DIN: 20221278NX0000224402

ORDER NO.58/2022-23

M/s. O.K. Cargo Craft Pvt. Ltd, (PAN: AAACO3043J), having address registered at OFFICE NO 28, AMBIKA TERRACE,1ST FLOOR, 66/4 CLIVE CROSS LANE, DANA BUNDER, MASJID (EAST) MUMBAI-400009 (hereinafter referred as the Customs Broker/CB) holder of Customs Broker License No. 11/887, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. On the basis of specific information received by the DRI, MZU, Mumbai investigation was conducted which revealed that various export firm including M/s Janman Lifestyle Pvt Ltd (IEC - 0314034366) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.

3. During the course of investigation, office premises from where Shri Suhel Ansari was operating, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonic, Mumbai – 400003 was searched on 14.08.2015. During the course of search of the said premises, certain records/documents, three laptops and one hard disk and various rubber stamps were recovered.

4. During the course of investigation statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari were recorded on 24.08.2015 by DRI, Mumbai where inter-alia they stated that they supplied fake invoices to the export firms including M/s Vaishnavi Exports and Imports Co. and M/s Janman Lifestyle Pvt Ltd. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.

5. DRI, MZU, Mumbai forwarded to the SIIB(X)/ACC for carrying out further investigation the details of exporters including M/s Janman Lifestyle

Pvt Ltd who have claimed undue drawback by overvaluing the exports, whereas cheaper material is exported, and to justify the value of the goods, fake invoices from Shri Suhel Ansari, are procured showing the higher purchase price.

6.1 During the course of investigation by investigating agency SIIB(X) various summons were issued to Shri Uday Bharat Desai, Shri Tushar Ashwin Bhatt and Rahul Kanaiyalal Gandhi respectively all are director of M/s. Janman Lifestyles Pvt. Ltd. (IEC- 0314034366) by post and all summons been returned back with postal remark "Unclaimed/Left"

6.2 During the course of investigation efforts were made to hand deliver the summons to Shri Tusar Ashwin Bhatt, Prorietor of M/s. Janman Lifestyles Pvt. Ltd. on his address "C/3-22, Pramod CHS, Chaittranjan Nagar, Rajawadi, Ghatkopar East, Mumbai-400067" on 04.06.2019 and it was found that the Shri Tusar Ashwin Bhatt is not residing at this address and found that the said building is under re- construction stage.

6.3 During the course of investigation Summons were issued to Shri Faiyaz Ismail Anware who vide his statement dated 10.03.2022 stated that he works as freight forwarder and Shri Uday Desai has approached him for export related work. He used to collect all export related documents from exporter and given them to CHA. He visited M/s. Janman Lifestyles Pvt. Ltd. office personally and completed the KYC. Further he stated that he has no idea regarding that from where exporter purchases the goods, exporter used to prepare all the export related documents. He further stated that as and when required, the exporter submitted/showed the samples of the consignments exported by them and he used to give the same to CHA for other related works.

6.4 During the investigation, the details of exports made by the exporter M/s Janman Lifestyles Pvt. Ltd., were retrieved from the ICES System. During the period from 2012-2016, the exporter made total exports of 59 shipping bills and availed total drawback of Rs. 33.10 lakh by way of overvaluation.

6.5 Further, on scrutiny of the shipping bills filed by the exporter M/s Janman Lifestyles Pvt. Ltd., it was found that the Customs Broker M/s. O.K. Cargo Craft Pvt. Ltd, CHA (11/887) had cleared 04 consignments/shipping bills of the said exporter.

7. During the investigation DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI the instant exporter has also adopted the similar modus-operandi.

8. During investigation a statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents. From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus operandi which was adopted by all such exporters including this exporter, who were exporting the goods on the basis of fake supplier's invoice.

09. Further from the investigation It appears from investigation that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise. During investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3

"(l) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Rule 3 of the Drawback Rules 1995 reads as under;

"Rule 3. Drawback – (1) Subject to provisions of –

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

10. From the investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai following appears:

The exporter M/s. Janman Lifestyles Pvt. Ltd. made exports vide 59 shipping bills and availed total drawback amount of Rs 33.10 Lakhs by way of over valuation. 21. From the investigations, it appears that M/s. Janman Lifestyles Pvt. Ltd. Excess drawback amount of Rs. 33.10 Lakhs is already disbursed to the exporter.

ii) M/s. Janman Lifestyles Pvt. Ltd. (IEC- 0314034366). has procured fake and bogus invoices from Shri Suhel Ansari;

iii) Goods of inferior quality were procured from the local market without any invoice.

iv) Incorrect transactions were made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.

v) This automatically explains the facts there was not physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.

vi) As export goods were procured from local market which was of inferior quality and having low value, therefore impugned export by M/s. Janman Lifestyles Pvt. Ltd. (IEC- 0314034366). was grossly overvalued and only done for the purpose of fraudulent claim of drawback.

11. It is found from the investigation that Customs Broker M/s. O.K. Cargo Craft Pvt. Ltd facilitated clearance of 04 consignments / shipping bills out of total 59 SBs of the said exporter. During investigation no one from M/s. O.K. Cargo Craft Pvt. Ltd (11/887) appeared in SIIB(X) office to record them statement.

11.1 The CHA is an agent of exporter. He works on behalf of Exporter. He also takes authorization to work on behalf of exporter. All CHAs, fully aware that omission and commission by the exporter affects working of image of CHA. It is a business practice that CHA knows on whose behalf they are working, as CHA can face investigation for omission and commission at any time. As per CHA Regulation, a CHA also requires to know the client. Even in the absence of such requirement it is business practice that the CHA knows on whose behalf they are working as the relation between CHA and exporter is long time relation.

11.2 Unlike retail business where customer comes to retail shop and transaction concludes in a moment, the relationship between CHA and exporter is a long-term relationship so it is not possible that CHA does not know the exporter. The CHA had been dealing with such individuals to collect documents and collect goods. The CHA must have raised his fees from the same source. It is also not possible for CHA to deal with non-existing persons.

11.3 This is a case where real culprit was very well existing and dealing with CHA. The exports were fictitious as Purchase Bills were also fictitious. Actual

movements of goods are always under cover of Challan and Invoices. There are some other requirements of local Government which prevent movement of goods without documentation. It is also unlikely that CHA has been receiving goods based on fictitious Bills and he was not aware. Further the CHA has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawbacks can be claimed by the exporter. Had the CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have possible. In respect of CHA M/s. O.K. Cargo Craft Pvt. (11/887) Ltd., the CHA in his letter dated 06.05.2022 has not cleared that whether exporter's address physically and all export related documents carefully verified by CHA. Therefore, it appears that CHA has not done the KYC and did not verify exporter's antecedents. Therefore, it seems that M/s. O.K. Cargo Craft Pvt. Ltd. has connived with exporter in claiming undue drawback, overvaluation and mis-declaration i.r.o. subject goods. Therefore, under the fact and such circumstances, the all CHAs actively connived with exporters in claiming undue Drawback and over valuing the export goods and mis-declaring in Shipping Bill. While coming with exporter they did not care to follow the obligation imposed through Regulation and Act.

12. Ongoing through the Show Cause Notices and RUD's received on 27.10.2022 the CB has failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018: -

-10(d) i.e., "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*"

The CB appears to have not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, it appears that the CB has violated 10(d) of CBLR,2018.

-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*"

CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have possible. The CB failed to exercise due diligence and aided the exporter for availing the undue drawback by the exporters by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari, were

procured showing the higher purchase price. Thus it appears that the CB has violated 10(e) of CBLR,2018.

-10(f) "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;"

It is the responsibility of the CB to inform the exporter about the instructions and public notice regarding the claiming of drawback. In the said matter it appears that CB has abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, it appears that the CB has violated 10(f) of CBLR,2018.

10(k)- "maintain upto date records such as bill of entry, shipping bill, transhipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current;"

The CB in their letter dated 06.05.2022 has not cleared that whether exporter's address physically verified and all export related documents carefully verified by CHA. During investigation no one from CB M/s. O.K. Cargo Craft Pvt. Ltd. (11/887) appeared in SIIB(X) office to give submissions. It appears that the CB failed to maintained records therefore the CB did not appear before the Investigation agency. Thus it appears that the CB has violated 10(k) of CBLR,2018.

-10(n)- *"verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*

M/s. O.K. Cargo Craft Pvt. Ltd., the CHA in his letter dated 06.05.2022 has not cleared that whether exporter's address physically verified and all export related documents carefully verified by CHA. As per offence report it appears that CHA has not done the KYC and did not verify exporter's antecedents. Thus, it appears that the CB has violated 10(n) of CBLR,2018.

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

During investigation no one from CB M/s. O.K. Cargo Craft Pvt. Ltd. (11/887) appeared in SIIB(X) office to record them statement. Thus, it appears that the CB has violated 10(q) of CBLR,2018.

In view of the above, it is evident that the exporter claimed duty drawback using fake invoices and CB M/s. O.K. Cargo Craft Pvt. Ltd, (11/887)

abetted the exporter to avail this non-eligible duty drawback and did not bring the matter to the notice of the Customs authorities.

13. From the above facts, it appears that prima facie, Customs Broker M/s. O.K. Cargo Craft Pvt. Ltd, (11/887) has violated Regulation 10(d), 10(e), 10(f), 10(k), 10(n) and 10(q) of CBLR, 2018. It is apprehended that the Custom Broker may adopt similar modus operandi in future consignments and department cannot remain oblivious to the danger posed by such an eventuality.

Accordingly, I pass the following Order:

ORDER

01. 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. O.K. Cargo Craft Pvt. Ltd, (11/887) with immediate effect, being fully satisfied that the Customs Broker has prima-facie not fulfilled their obligations as laid down under Regulation 10(d), 10(e), 10(f), 10(k) ,10(n) and 10(q) of CBLR, 2018.

02. However, I offer the Customs Broker M/s. O.K. Cargo Craft Pvt. Ltd, (11/887) an opportunity of personal hearing on **09.01.2023** at **12.00 PM** through video conferencing facility. Any written representation against this order should reach the undersigned before the date of hearing.

03. M/s. O.K. Cargo Craft Pvt. Ltd, (11/887) [PAN No. AAACO3043J] is directed to surrender all the original Custom Passes issued to their employee/partner/director/Proprietor immediately.

04. 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.

O/C

28/12/2022

(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai – I

To,

M/s. O.K. Cargo Craft Pvt. Ltd, (PAN: AAACO3043J),
OFFICE NO 28, AMBIKA TERRACE,1ST FLOOR,
66/4 CLIVE CROSS LANE, DANA BUNDER,
MASJID (EAST) MUMBAI-400009

Received by
Mr. Lalit P Bhada
Kandexpro-B-329
29/12/22

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai I, II, III Zone
2. CIU's of NCH, ACC & JNCH

3. The Commissioner of Customs, Mumbai I, II, III Zone
4. EDI of NCH, ACC & JNCH
5. Bombay Custom House Agent Association
6. Office copy
7. Notice Board

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