



प्रधान सीमाशुल्क आयुक्त (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टम ब्रोकर अनुभाग, नवीन सीमाशुल्क भवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्ड इस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F. No. GEN/CB/89/2024-CBS

Date: 21.05.2024

DIN: 20240577000000553795

ORDER NO. 16 /2024-25 CBS

M/s Spaceage Logistics CB No. (11/2001) (PAN No. AGQPA5206J) (hereinafter referred to as the "Custom Broker or CB" having registered office at Subhan Ahmed House, R/11, Opp. Cigarette Factory, Chakala, Sahar Road, Andheri East, Mumbai-400099, is holding the said CB license issued by the Commissioner of Customs (General), Mumbai-I under erstwhile regulation 7(1) of CBLR, 2013 now regulation 7(2) of CBLR, 2018). M/s Spaceage Logistics is a Proprietorship entity and Mr. Iftekhar A. Ansari is Proprietor of the said CB entity.

Brief Facts of the Case:

2. An Offence Report in the form of Show Cause Notice No. 142/ADC/ADJ(X)/2022-23/ACC dated 30.03.2024 issued by the ADC, Export Assessment Cell, Air Cargo Complex, Sahar, Andheri (East), Mumbai-III, was received, wherein, inter-alia following were informed:

2.1 M/s Heeba Enterprise Private Limited (IEC: 0316963721) {hereinafter referred to as "the said exporter"} having registered IEC address at West Building, Shop No. 302, S V Road, Opp. Andheri Subway, Andheri (W), Mumbai-400058, exported goods for the period from 25.12.2016 to 04.11.2018 but FOB has not been realized against exports within stipulated time, fraudulently availed and recovery of export incentives (Drawback and ROSCTL) against such exports.

2.2 During the course of investigation, past export records of the said exporter were retrieved from EDI 1.5 System wherein exporter had 108 Shipping Bills {hereinafter referred to as S/Bs} in the period from 25.12.2016 to 04.11.2018 wherein, total FOB was Rs. 15,47,16,142/-, total drawback of Rs. 63,49,427/- & total ROSCTL Rs. 22,48,812/- and most of the export incentives have already been disbursed to the exporter. The exporter had filed 108 Shipping Bills through their Customs Brokers M/s Eagle Shipping Agency, M/s Senghi Shipping Services, M/s Atlantic Customs Brokers and M/s Spaceage Logistics etc. for clearance of RMGs goods, home and kitchen accessories, bags and kidswear etc. The same were destined to the United States of America, Mali, Sudan, Qatar, Zambia, Canada,

Tunisia, Saudi Arabia, Malayasia, Nigeria, United Arab Emirates, Tanzania, Sri Lanka, Djibouti, Togo, Ghana and Kuwait.

2.3. During the course of investigation, SIIB (X), ACC vide letter dated 03.05.2023 requested Drawback (EDI) and IGST Sections to suspend all export incentives to the exporter M/s. Heeba Enterprise Private Limited (IEC 0316963721) to safeguard the government revenue.

2.4 Summonses dated 02.01.2023, 10.03.2023 and 25.04.2023 were issued to the exporter for recording his statement and to submit relevant documents pertaining to the case. Exporter neither submitted the documents nor presented himself before the investigating agency for recording his statement. The Summons dated 10.03.2023 returned with the remark '**Unclaimed**'.

2.5 Summons dated 07.11.2023 was issued to the CB M/s Spaceage Logistics (11/2001) for recording their statement and submit KYC detail of the exporter, authorisation letter, shipping bills, invoice and packing list pertaining to the case but was **returned with the remarks Not Known**, no such person on the address and incomplete address.

2.6 During the course of investigation, a letter dated 03.05.2023 issued to the Branch Manager of Development Credit Bank Ltd to provide bank statement and KYC details of bank account no. 00421300000781 of M/s Heeba Enterprise Pvt Ltd but no reply was received from the bank. Furthermore, Reminder-I dated 24.08.2023 and Reminder-II dated 16.10.2023 were issued to bank, then personal visit was done on 25.10.2023 and KYC details and bank statement were received from the bank.

2.7 On scrutiny of bank KYC, it was found that the address of the exporter mentioned on Importer Exporter Code (IEC) and Bank KYC was same and the summonses to that address already returned with the remark 'Unclaimed'. On scrutiny of the bank statement, it was found that account was closed.

3. BRC Status/Remittance Details:

3.1 It is evident from the data retrieved from ICES 1.5 system that the foreign remittance has not been realised even after the expiry of the prescribed time-limit. After investigation it has been found that FOB Rs. **15,47,16,142/-** involved in 108 shipping bills is not realized even after the prescribed time limit.

3.2 The total drawback disbursed for the 82 Shipping Bills where Drawback Scroll has been generated is liable to be rejected/recovered with interest under the provisions of Rule 17, Rule 18 (1) & 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017 read with Sections 75(1) and 75A (2) of the Customs Act, 1962. Therefore, the drawback amounting to Rs. **53,63,865/- in respect of Duty Drawback has been availed and disbursed** of the said 82 shipping bills appears to be rejectable/recoverable with interest under the above- mentioned provisions.

3.3 The exporter has claimed ROSCTL under 108 shipping bills and ROSCTL scroll generated for the 8 shipping bills for which BRC was not realised even after the prescribed time period under the provisions of ROSCTL scheme. Therefore, the ROSCTL amounting to

Rs. **2,85,751/-** in respect of ROSCTL has been availed and disbursed of the said 8 shipping bills appears to be rejectable/recoverable with interest under the above-mentioned provisions MoT's Notification No. 14/26/2016-IT (Vol.II) (Part II) dated 02.05.2019 and CBIC Notification No. 77/2021-Customs (N.T.) dated 24th September, 2021.

4. Findings of Investigation

4.1 From the above stated facts and extant legal provisions, it is a matter of fact that: -

4.2 The exporter M/s Heeba Enterprise Private Limited had exported total 108 shipping bills of Readymade Garments from Air Cargo Complex, Mumbai having total FOB amount of Rs. **15,47,16,142/-**, claiming drawback of Rs. **63,49,427/-**, ROSCTL amount of Rs. **22,48,812/-**. The export proceeds in respect of the said shipping bills have not been realised even after stipulated time is over.

4.3 Further, the exporter was summoned to appear for recording of their statement vide Summonses dated 02.01.2023, 10.03.2023 and 25.04.2023 respectively. The said summonses were returned with the remark 'Unclaimed' and they did not come forward for providing evidence in this regard. It appears that the exporters non-existing and deliberately trying to avoid appearing before Customs to record his statement and thus not co-operating with the investigation violating the Customs Act, 1962.

4.4 An amount of Rs. **15,47,16,142/-** is pending to be received and yet no concrete efforts were made by the exporter to realise that amount, shows that the export was made with the sole intention to defraud the government exchequer by way of getting undue drawback, IGST refund and ROSCTL.

4.5 The above acts of omission and commission by M/s Heeba Enterprise Private Limited resulted in violation of provisions of Section 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. Thus, the goods exported vide Shipping Bills (though not available physically) are liable for confiscation under Section 113(i) & 113(ia) of the Customs Act, 1962 and M/s Heeba Enterprise Private Limited is liable for penal action under Section 114 (iii) and/or Section 114AA of the Customs Act, 1962.

4.6 Further, it appears that the exporter had claimed export incentives viz. **Drawback of Rs. 53,63,865/- and ROSCTL Rs. 2,85,751/-** which was ineligible and intentionally did not return the incentives viz. drawback and ROSCTL even though the export proceeds in respect of the said shipments were not realised even after expiry of stipulated time period. The exporter did not submit any proof with respect to any effort done by him in this respect. His acts of omission and commission have resulted in violation of various provisions of Customs act, 1962 and it appears that he has abetted, aided and connived in affecting the said fraudulent export for availing ineligible export incentives. Therefore, he, in person also, is liable for penal action under Section 114(iii) and/or Section 114AA of the Customs Act, 1962.

5. In view of the above, it appears that CB M/s Spaceage Logistics (11/2001) has failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018: -

5.1 Regulation 10 (a) of CBLR, 2018 which reads as: *“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;”*

In the instant case, as per the investigation report, it is a matter of fact that the said exporter filed 108 Shipping Bills through various Customs Brokers including Customs Broker M/s Spaceage Logistics (11/2001). During investigation various summonses were issued to the exporter which were returned with remark “Unclaimed”. It is evident from the investigation report that the said Customs Broker filed Shipping Bills without obtaining proper authorisation from exporter/IEC holder. Further, the said CB was neither present for recording their statement before investigating agency nor produced authorisation from the exporter. Hence, the said CB appears to have violated regulation 10(a) of CBLR, 2018.

5.2 Regulation 10 (d) of CBLR, 2018 which reads as: *“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.”*

In the instant case, the said exporter filed Shipping Bills through various Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From the facts of the case, it is amply clear that the fraudulent export was done so as to claim the undue export benefits. The CB also never appeared before the investigation agency despite several summons. Thus, it appears the CB either abetted the said fraud or failed to perform his duties by not advising the exporter to comply with the rules and regulations regarding receiving foreign remittance timely. Such fraud and non-compliances by the said exporter were never brought to the knowledge of the Customs authorities by the CB which he was duty bound under the CBLR, 2018. Hence, the said CB appears to have violated regulation 10(d) of CBLR, 2018.

5.3 Regulation 10 (e) of CBLR, 2018 which reads as: *“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”.*

In the instant case, as per the investigation report, the said exporter filed the Shipping Bills through their Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From investigation report, it appears that CB did not exercise due diligence in ascertaining the correctness of claim of availing the export benefits under various export incentive schemes. If the said CB had exercised due diligence to ascertain the correctness of claims made under various export incentive schemes, then financial loss to government exchequer could have been averted. Hence, the said CB appears to have violated regulation 10(e) of CBLR, 2018.

5.4 Regulation 10 (n) of CBLR, 2018 which reads as: *“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.”

In the instant case, as per the investigation report, the various summonses addressed to the exporter returned with **“Unclaimed”** remark and the said exporter did not even come for recording of statements under section 108 of the Customs Act, 1962. It appears that the exporter was non-existent at the address mentioned in IEC and hence it shows that the CB never verified the same. In addition to this, CB did not establish any communication linkage with the Exporter. It may be regarded that the subject case of fraudulent exports would have been avoided if the CB had made strenuous efforts to verify the correctness of identity of the exporter/client and their functioning at the declared address. Hence, the said CB appears to have violated regulation 10(n) of CBLR, 2018.

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

In the instant case, during investigation summons was issued to CB M/s. Spaceage Logistics but they did not turn up for giving statement under section 108 of the Customs Act, 1962 which caused delay in investigation proceedings. The CB did not co-operate with the Customs authorities in inquiry proceedings. Hence, the said CB appears to have violated regulation 10(q) of CBLR, 2018.

6. The CB M/s Spaceage Logistics (11/2001) had filed Shipping Bills on behalf of the exporter M/s Heeba Enterprise Private Limited and FOB has not been realized against export within stipulated time and exporter wrongly availed export incentives viz. Drawback and ROSCTL. During the course of investigation, neither exporter nor Customs Broker was present before investigating agency for recording their statements under section 108 of the Customs Act, 1962 which shows sheer non-compliance of the regulations stipulated in CBLR, 2018 by the said CB.

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 *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...”

7. From the above facts, it appears that, prima facie, Customs Broker M/s Spaceage Logistics (11/2001) violated Regulation 10(a), 10(d), 10(e), 10 (n) & 10(q) 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.

8. Accordingly, I pass the following Order:

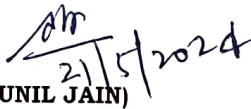
ORDER

8.1 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 CB licence of M/s Spaceage Logistics (11/2001) with immediate effect, being fully satisfied that the Customs Broker has prima-facie did not fulfil their obligations as laid down under Regulation 10(a), 10(d), 10(e), 10(n) & 10(q) of CBLR, 2018.

8.2 However, I offer the Customs Broker M/s Spaceage Logistics CB No. (11/2001) an **opportunity of personal hearing on 30.5.2024 at 1.00 PM** hours. Any written representation against this order should reach the undersigned before the date of hearing.

8.3 M/s Spaceage Logistics (CB No. 11/2001), (PAN No. AGQPA5206J) is directed to surrender all the original Custom Passes issued to their employee/partner/director/Proprietor immediately.

8.4 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 Spaceage Logistics (CB No. 11/2001),
Subhan Ahmed House, R/11, Opp. Cigarette Factory,
Chakala, Sahar Road, Andheri East, Mumbai-400099.

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai Zone I, II, III.
2. CIU's of NCH, ACC & JNCH.
3. The Commissioner of Customs, Mumbai Zone I, II, III.
4. EDI of NCH, ACC & JNCH.
5. BCBA.
6. Office copy.
7. Notice Board.