



प्रधानआयुक्त (सामान्य) सीमा शुल्क का कार्यालय
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL)**
कस्टम ब्रोकरअनुभाग, नवीन सीमा शुल्क भवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्ड इस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI ZONE - I

F.NO. GEN/CB/374/2023-CBS

Date: 25.06.2024

DIN: 20240677000000119707

ORDER No. 27/2024-25

M/s Cargo Concepts (Bombay) Pvt. Ltd. (Licence no. 11/917, CB code AABCC5421HCH001), having registered address at Ground Floor, Shop No.1, Monarch Piazza, Plot No.56, Sector 11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/917, issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. M/s Kash International Trade Co. (IEC: 0516960768), filed Bill of Entry No. 2823097 dated 11.10.2022 for clearance of goods contained in Container No. PCIU8674977, through their authorized Customs Broker M/s Cargo Concepts (Bombay) Pvt. Ltd. (CB PAN: AABCC5421HCH001). The description declared was Men's Casual Shoes, the quantity declared was 13404 pairs, having declared assessable value of Rs.15,64,630/-. The said container was put on hold and the goods were examined by the officers of SIIB (I) under Panchnama dated 13.10.2022 at CFS M/s. Allcargo Logistics Limited. Representative Samples of the goods were drawn for further examination.

2.1 During the course of examination, the goods were found to be shoes of various brands such as 'Nike', 'Adidas', 'Puma', 'Asics', 'Onitsuka', 'Converse', 'Nike/Air Jordan', 'New Balance' & 'Airstyle' of various sizes and types. The importer has declared 13404 pairs of 'Men's Casual Shoes', whereas a total of 13468 pairs of shoes were found during examination. Therefore, it appeared that the goods were grossly mis-declared in respect of description and quantity. The details of the goods found are as per Table-A below:

Sr. No.	Name	Quantity
1	Nike Brand Shoes	4608
2	Adidas Brand Shoes	2124
3	Puma Brand Shoes	972
4	Asics Brand Shoes	468
5	Onitsuka Tiger Brand Shoes	1116
6	Converse Brand Shoes	396
7	Nike/ Air Jordan Brand Shoes	330
8	Adidas Brand Shoes	234
9	New Balance Brand Shoes	720
10	Nike Brand Shoes	280
11	Shoes without brand marking	468
12	Air Style marked Shoes	1752
	Total	13468

2.2 Import of such branded items requires verification of Intellectual Property Rights of various right holders. Accordingly, the matter was referred to IPR Cell, JNCH, vide letter dated 26.10.2022, to verify whether brands namely 'Nike', 'Adidas', 'Puma', 'Asics', 'Onitsuka', 'Converse', 'Nike/Air Jordan', 'New Balance' & 'Air Style' are registered under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 or not. The IPR Cell, JNCH, vide letter dated 21.11.2022, informed that 'Nike', 'Adidas', 'Puma', 'Asics', 'Onitsuka', 'Converse', 'Nike/Air Jordan' are registered with Customs under IPR (Imported Goods) Enforcement Rules, 2007; the brand 'New Balance' and 'Air Style' are not registered with Customs under IPR (Imported Goods) Enforcement Rules, 2007. It was further informed vide the said letter that the right holders of these brands joined the proceedings and submitted inspection report stating that the goods are counterfeit and requested for valuation of these items for submission of Bond/Bank Guarantee. Accordingly, vide letter dated 08.12.2022, valuation of the said goods was forwarded to the IPR Cell, JNCH, for submission of Bonds/Bank Guarantees by the concerned right holders. The Deputy Commissioner of Customs, IPR Cell, SIIB(I), JNCH, vide letter dated 23.01.2024, informed that all the concerned right holders have submitted the duly executed Bonds and Bank Guarantees.

2.3 Since, the goods were found to be mis-declared in terms of description and quantity and were in infringement of Intellectual Property Rights, the goods appeared to be liable for confiscation under Section 111(d), (1) & (m) of the Customs Act, 1962. Thus, there was a reason to believe that the said goods covered under Bill of Entry No. 2823097 dated 11.10.2022 are liable for confiscation under Section 111(d), (1) & (m) of the Customs Act, 1962. Therefore, the said goods were placed under seizure as per Section 110 of Customs Act, 1962 vide Seizure Memo No. 111/2022-23 dated 21.11.2022 issued with DIN 20221178NX0000116691. The Seizure Memo was sent to the importer on registered address of IEC through speed post (EM0357272441N). However, the same was returned with remarks "Addressee left without instructions".

2.4 The items mentioned at Sr. No. 9, 11 & 12 of Table-A were not counterfeit shoes. The total Assessable Value in respect of these unbranded shoes is re-determined to Rs. 5,97,393/- and the total re-determined duty works out to Rs. 3,29,283/-. Further, rest of the shoes mentioned in Table-A were found as branded counterfeit shoes which infringe IPR Enforcement Rules, 2007. Assessable value of these branded counterfeit shoes was re-determined to Rs. 34,06,143/- (Rupees Thirty Four Lakh Six Thousand One Hundred Forty Three only).

3. Statement of Shri Rajeev Kumar, Proprietor and IEC Holder of M/s. Kash International Trade Co. was recorded on 30.11.2022 under Section 108 of Customs Act, 1962 in respect of Bill of Entry 2823097 dated 11.10.2022, wherein he, inter-alia, stated that he was proprietor, IEC holder of M/s. Kash International Trade Co. The firm Kash International Trade Co. was started in 2015, in his name and he started import business. He started importing consignment in 2015 and since then he had been doing this business continuously.

3.1 He further stated that to the best of his knowledge, they had made around 10 to 15 shipments in the name of M/s. Kash International Trade Co. since 2015 from different ports. In Nhava Sheva port, this was their first import. He stated that he ordered the shoes for the said consignment over telephone whatsapp no.

and did not generate the purchase order. The supplier showed him the various brand shoes and accordingly, he placed the order. He agreed that the shoes found were counterfeit. But, he ordered only for Men's Casual various brands shoes (original). However, the supplier packed counterfeit goods along with unbranded shoes.

3.2 He also admitted that he knew the IPR Rules and he agreed that importing counterfeit shoes is an infringement of IPR Rules. He informed that this was his first import from that supplier. Before that, he used to import from different suppliers.

4. Statement of Shri Ram Ashish Singh, Representative & 'G' Card holder (Kardex No./Card No. S-4251) of Customs Broker M/s. Cargo Concepts (Bombay) Pvt. Ltd. (11/917) was recorded in respect of Bill of Entry No. 2823097 dated 11.10.2022, under Section 108 of the Customs Act, 1962, on 27.02.2023, wherein he, inter-alia, stated that the Customs Broker, M/s Cargo Concepts (Bombay) Pvt. Ltd. (11/917), is registered at Mumbai. He looks after filing of import documents since 2016. He had been working with that firm since last seven years.

4.1 He further stated that they had been filing the import documents of M/s. Kash International Trade Co. at Mundra Port since last 5-6 years. First time the importer contacted them through telecommunication. In Nhava Sheva, this was the first consignment they had filed for M/s. Kash International Trade Co. They had been authorized by the importer M/s. Kash International Trade Co. (IEC No. 0516960768) to file Bill of Entry No. 2823097 dated 11.10.2022 on their behalf. Shri Rajeev Kumar, Proprietor of M/s Kash International Trade Co., had provided the documents for the import clearance of the said consignment by hand.

4.2 He also stated that they received the copies of KYC documents such as Aadhaar Card, IEC, GST and PAN card through mail. However, they did not verify the documents and address of the importer M/s. Kash International Trade Co. He also stated that they filed Bill of Entry No. 2823097 dated 11.10.2022 on the basis of import documents given to them by the importer. In the import documents, only 'Men's Casual Shoes' was mentioned. So, they filed the documents accordingly.

5. The license of CB, M/s Cargo Concepts (Bombay) Pvt. Ltd. (Licence no. 11/917, CB code AABCC5421HCH001) was suspended vide Order No. 23/2024-25 dated 11.06.2024 for violation of Regulations 10(d), 10(e) and 10(n) of CBLR, 2018. The CB was given an opportunity of personal hearing in this matter on 20.06.2024.

6. WRITTEN SUBMISSIONS OF THE CB:- In response to the said Suspension Order, the CB submitted their reply dated 18.06.2024 through their authorized representative Adv. Anil Balani.

6.1 They submitted that the Bill of entry was filed on 11.10.2022, the cargo was seized on 21.11.2022 and the case was adjudicated on 21.03.2024. As per Regulation 16 of CBLR, 2018 license can be suspended only in appropriate cases where immediate action is necessary.

6.2 They submitted following judgements where courts have lifted the suspension on the ground of lapse of time between the alleged offence and the suspension order:

- i) National Shipping Agency -2008 (226) ELT 46 (Born.):

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.

- ii) Burieigh International -2008 (226) E.I.T. 49 (Born.):

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.

- iii) S.A. Dalal and Co.- 2008 (221) E.L.T. 488 (Born.):

Order of suspension is to be used in emergent situation where no further time can be wasted - Order of suspension issued in May, 2007 - Case does not fall within Regulation 20(2) of Customs House Agents Licensing Regulations, 2004.

- iv) East West Freight Carriers (P) Ltd.-1995 (77) ELT 79 (Mad.):

Suspension of licence not sustainable unless order indicates application of mind by Collector to the aspect whether immediate action was necessary pursuant to contravention by clearing agent - Jurisdiction conferred on Collector to suspend the licence only in cases where immediate action is necessary.

- v) N.C. Singha and Sons-1998 (104) ELT 11 (Cal.):

Suspension of CHA licence not sustainable because the Commissioner's order does not spell out that any immediate action was required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted - The minimum that is required is the spelling out of the circumstances in the suspension order warranting the need to take such immediate action and to actually say that immediate action is indeed required to stop the activities of the clearing agent forthwith.

- vi) Babaji Shivram Clearing & Carriers P.Ltd.-2011(269) ELT 222 (Born):

"Though the impugned order states that continuation of the CHA licence would be prejudicial to the interests of the revenue, the nature of the prejudice has not been set out in the order.

Suspension of a CHA licence under Regulation 20(2) of the 2004 Regulation can be ordered where immediate action is necessary. In the present case, the customs authorities in the middle of January, 2011 were aware of the fact that the documents submitted by the petitioners were fabricated, however the impugned order has been passed belatedly on 28- 3-2011".

6.3 They further submitted that the Regulations 10(d), (e) and (n) of the CBLR, 2018 were not violated for following reasons:-

- a. All KYC documents like IEC, PAN, Aadhar and IGST registration were submitted on the spot.
- b. Although the statement of G-card holder made it appear that the documents and the address of the importer were not verified, the said statement does not inspire any confidence.
- c. The IEC was verified online. All other documents and address are found to be genuine.
- d. The Director personally interacted with Importer and verified his address and antecedents by visiting Delhi.
- e. The fact is that the Custom Broker did not have any prior information or knowledge about the presence of branded shoes or counterfeit shoes in the consignment.
- f. The Custom Broker had instructed the Importer verbally to comply with all the laws. He was made aware about IPR provisions.

6.4 They also submitted that they are reputed CB firm, operating at three ports Hajira, JNPT and Mundra, are in business from 1992 and have a clean record; they service some of the most reputed corporates; they contribute more than Rs.100 Crores towards Custom duty every year; they employ 35 persons; the sudden suspension is causing grave and irreparable loss and hardship to the firm, its customers and its employees; this is the first case against the Custom Broker and they are confident of proving their innocence in the Inquiry.

7. RECORDS OF PERSONAL HEARING: Shri Anil Balani, Advocate for the CB, along with Shri Kanhaiya Kasera appeared for the personal hearing before me on 20.06.2024. Shri Balani reiterated their written submission, and requested to revoke the suspension of their license.

8. DISCUSSION AND FINDINGS

8.1 I have carefully gone through the O-in-O No. 1899(L)/2023-24/ADC/NS-III/JNCH /Gr. 3 dated 21.03.2024, the suspension order no. 23/2024-25 dated 11.06.2024 of the CB licence and the written and oral submission of the CB made at the time of personal hearing.

8.2 I find that this office received the O-in-O No. 1899(L)/2023-24/ADC/NS-III/JNCH /Gr. 3 dated 21.03.2024 passed by the Addl. Commissioner of Customs, Appraising Group 3, NS-III, JNCH on 02.04.2024. As per this O-in-O SIIB(I), JNCH, investigated a case of import consignments of Men's Casual Shoes of M/s Kash International Trade Co., filed through their CB, M/s Cargo Concepts (Bombay) Pvt. Ltd., having Custom Broker License No. 11/917, which appeared to have been misdeclared in terms of quantity as 64 pairs of shoes have been found in excess to the declared quantity. The goods were also found to be in contravention to the IPR (Imported Goods) Enforcement Rules, 2007 as they were found to be counterfeit shoes of various brands. Consequently, action was taken against the CB under CBLR, 2018 and the CB Licence was put under immediate suspension vide order no. 23/2024-25 dated 11.06.2024, under Regulation 16(1) of CBLR, 2018.

8.3 I have carefully perused written and oral submission made by the CB wherein they have cited various facts to substantiate that suspension of license is not warranted in the subject case.

8.4 I observe that no SCN was issued by the investigating agency in the case. The O-in-O in para 30 held that the CB violated Regulation 10(d), 10 (e) and 10(n) of CBLR, 2018 and imposed a penalty of Rs. 50,000/- on the CB under section 112(a) of Customs Act, 1962. There is no other discussion or finding about how this conclusion has been arrived at by the adjudicating authority.

8.5 As per the submission of the CB, they had verified KYC of the importer and the address was visited by the director of the firm. I observe that in the O-in-O dated 21.03.2024, Para 30 dealt with the role of the CB and accordingly penalty was imposed for violation of CBLR, 2018. The O-in-O was also sent to the importer on their registered address, which was same as per KYC documents of the importer.

8.6 I find that during all the proceedings of the case the importer was found existing at the declared address.

9. Further, I have carefully perused the various case laws submitted by the CB and found that in all those cases, one common thing is coming out that the suspension of CB license is not warranted where a considerable amount of time has passed since alleged violation of CBLR (or CHALR) by the CB and passing of suspension order. Here the subject matter of consideration is whether to revoke or continue to suspension of license of the charged CB, pending the outcome of the inquiry against the charged CB under Regulation 17 of CBLR, 2018.

9.1 Moreover in RATNADIP SHIPPING PVT. LTD. Versus COMMR. OF CUS. (GENERAL), MUMBAI - 2019 (370) E.L.T. 1765 (Tri. - Mumbai) - 2019 (370) E.L.T. 1765 (Tri. - Mumbai) - *"Customs House Agent - Suspension of licence - Cause of immediate action or continued action of suspension could not be deciphered from impugned order – No merits in impugned order to sustain the same - Regulations 16(2) and 17 of Customs Brokers Licensing Regulations, 2018. - Proper analysis of all the decisions referred above will show that there is enough power vested in the Commissioner to suspend the license of Custom Broker, in terms of Customs Brokers Licensing Regulations, 2018. **However, said power which impact the lively hood of the person and his employee needs to be exercised with caution and in accordance with the inbuilt safeguards, to prevent the arbitrary and reckless use of the power.** One of the safeguard that has been built in the scheme, is to decide the matter after affording the post decision hearing in case of immediate suspension. This post-decision hearing is not an empty formality but the responsibility cast on the Commissioner to decide the issue of continuation of suspension in reasonable and logical manner by way of speaking order, clearly recording the reasons for suspension of license.*

10. The very objective of CBLR, 2018 (earlier CBLR, 2013) is to ensure that CB acts honestly and efficiently in the conduct of his business. The CB's responsibility was to verify the KYC of the importer. I observe that at this stage no prima facie evidence is coming out to indicate that the KYC was not verified. The same needs to be investigated in detail regarding violation of regulations of CBLR by the CB under regulation 17 of the CBLR, 2018 by appointing a proper Inquiry Officer. The charged CB does not appear to be a repeated offender. The present case before me is limited to decide whether under the facts of the case and submissions made by the CB, the suspension order no. 23/2024-25 dated 11.06.2024 shall be continued or not?

11. Keeping in mind the above findings and the principle of proportionality of punishment and considering the livelihood of CB and their employees, I find that the submissions made by the CB to be acceptable to the extent of not continuing the suspension pending further inquiry proceedings as per CBLR, 2018. I reiterate that the revocation of suspension does not jeopardise further proceedings under CBLR, 2018.

12. Accordingly, I pass the following order:

ORDER

13. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16(2) of CBLR, 2018 hereby revoke the suspension of the Customs Broker License (License No. 11/917, PAN- AABCC5421H) of M/s Cargo Concepts (Bombay) Pvt. Ltd., ordered vide Order No. 23/2024-25 dated 11.06.2024, pending inquiry proceedings under Regulation 17 of CBLR 2018.

14. This order is being issued without prejudice to any other action that may be taken against the Customs Broker or any other person(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force.

SJ
25/6/2024

(SUNIL JAIN)

Pr. Commissioner of Customs (General)
New Customs House, Mumbai - I.

To
M/s Cargo Concepts (Bombay) Pvt. Ltd. (CB No. 11/917),
Ground Floor, Shop No.1, Monarch Plaza,
Plot No.56, Sector 11, CBD Belapur,
Navi Mumbai, Thane, Maharashtra, 400614

Copy to:

1. The Chief Commissioner of Customs, Mumbai I, II, III Zone
2. Commissioner of Customs (General), Mumbai Zone-II, JNCH.
3. CIUs of NCH, ACC & JNCH
4. EDIs of NCH, ACC & JNCH
5. Notice Board