



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/125/2024-CBS

Date: 15.04.2024

DIN: 20240477000000223002

**ORDER No. 03 /2024-25**  
**UNDER REGULATION 16 OF THE CUSTOMS BROKER LICENSING**  
**REGULATION, 2018**

M/s Modern Cargo Services Pvt. Ltd. (Licence no. 11/881, CB code AAACM7088BCH001), having registered address at 14, 3rd floor, Samhita Warehousing Complex, Off Andheri Kurla Road, Andheri East, Mumbai 400072 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/881, 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. During the course of the investigation, it was revealed that Black Pepper was imported by M/s Golden Feathers Traders from ICD, Rajsico, Jaipur through their CB, M/s Modern Cargo Services Pvt. Ltd. The imported goods were subsequently sold to M/s Shivaansh Marketing & M/s RM Enterprises in Bond to Bond Sale. The goods were either clandestinely removed from M/s Akshay Logistics warehouse (NSAIU131) or taken to a private warehouse and were being illegally diverted to the local market to evade the payment of Customs Duty and to circumvent the restrictions imposed under the Customs Act, 1962 or by any other law for the time being in force. The permission for bond-to-bond transfer from ICD, Rajsico, Jaipur to Mumbai was taken on the basis of fake/ forged documents/signature/stamp of the customs officers. Neither the firm M/s Golden Feather Traders nor its proprietor Shri Lakshay Kumar was found existing /residing on the declared address.

3. Statement of Mr. Kaushlendra was recorded on 24.07.2023 u/s 108 of the Customs Act, 1962. In the statement, he informed that he was working as Deputy Manager (G card) of M/s Modern Cargo Services Pvt. Ltd. since Nov, 2019 and looked after all customs clearances and sales in Jaipur.

3.1 He stated that he was contacted by Mr. Rana Thakur in Sept, 2023. Mr. Thakur introduced himself as an authorized person of M/s Golden Feather Traders, Delhi and wanted to import Black Pepper. Mr. Thakur said that they were importing the goods in Jaipur instead of Delhi because the warehousing charges were low in ICD RSIC and that they would clear the consignment as and when they would get customers. Mr. Thakur provided copies of IEC, GSTIN, Aadhar, PAN and KYC attested by the bank for the firm and its proprietor. Mr. Kaushlendra stated that it was his obligation to verify the correctness of IEC, GSTIN, identity of the client and functioning of the client at the declared address, however, he did not verify identity of the client and functioning of the client at the declared address personally.

3.2 He asked Mr. Thakur as to why they were not clearing the consignment for sale to Delhi to which Mr. Thakur informed that they would transfer the goods to M/s Akshay Logistics on warehouse-to-warehouse basis and later they would sell the goods in Mumbai.



3.3 He stated that when he received various calls from his Mumbai office regarding tendering statement to DRI, Nhava Sheva in the matter of import of Black Pepper by M/s Golden Feather Traders, he got scared and ran away to his native village in UP. He was informed by an ICD, RSIC officer about removal of goods from the warehouse by theft without payment of Customs Duty. He then contacted Mr. Thakur about the status of the goods and provide FIR copy if any theft had been done. He was provided an FIR copy by Mr. Thakur which he then submitted to ICD, RSIC customs.

4. In his statement dated 18.09.2023, Mr. Kaushlendra stated that he met with Mr. Rana Thakur in ICD, RSIC during clearance of export goods of one of their clients. He also stated that he never met Mr. Lakshay Kumar, proprietor of M/s Golden Feather Traders, Delhi personally. He informed that Mr. Thakur submitted space certificate to proceed in customs for transfer of goods bond basis.

4.1 He further informed that he introduced Mr. Kailash Singh of M/s Daksh Logistics to Mr. Thakur for transportation of warehoused goods to M/s Akshay Logistics, Raigarh. He said that he did not have contact details of M/s Akshay Logistics so he gave the mobile number of Mr. Thakur to the drivers instead of the contact details of M/s Akshay Logistics, Raigarh. Mr. Thakur told the drivers to call him once they enter Raigarh and then he would give the contact details of the person who would guide the drivers to the premises of M/s Akshay Logistics. He stated that as per documents, containers containing Black Pepper were moved from Jaipur to M/s Akshay Logistics, Raigarh, however, as per statement of Mr. Mahendra Singh dated 15.09.2023, the containers were unloaded in a warehouse in Panvel instead of M/s Akshay Logistics, Raigarh.

5. Statement of Mr. Krishna Kumar Govindrajan, General Manager, M/s Modern Cargo Services Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he was the General Manager of M/s Modern Cargo Services Pvt. Ltd. since 03.12.2018 and looked after General administration of the company. He informed that Mr. Kaushlendra was their Branch Manager at Jaipur and handled their Jaipur branch business. Mr. Kaushlendra would liaise with Mr. Firdos, CEO of their company for any business related issues from time to time. Mr. Firdos expired on 16.01.2023.

5.1 He further stated that in November 2022 they got aware that some import business of M/s Golden Feather Traders was on boarded by Mr. Kaushlendra and the shipment was to be examined 100%. Mr. Firdos initially advised Mr. Kaushlendra not to take up such new shipments, however, the BE was already filed. Therefore, Mr. Kaushlendra was later advised to take caution and proceed.

5.2 He informed that they were not aware of the importer M/s Golden Feather Traders, its proprietor Mr. Lakshay Kumar and authorized signatory Mr. Rana Thakur as all the company affairs were handled by Mr. Kaushlendra for Jaipur branch. The KYC documents, IEC and GST Registration of M/s Golden Feathers Traders were verified online. They did not verify the genuineness of the importers and its proprietor's residential address in Delhi. They were also not aware of the Bond to Bond transfer of the imported goods.

5.3 They received a call from DRI, Nhava Sheva in the 3<sup>rd</sup> week of March, 2023 to produce Mr. Kaushlendra before the agency. Mr. Kaushlendra was informed about it and was requested various times to come to Mumbai to co-operate with the agency, however, he refused to come and emailed them on 31.03.2024 saying that he would not be available on call or email as he had to leave his hometown for some urgent work. 03 people from the CB firm, including Mr. Govindrajan went to the residence of Mr. Kaushlendra in Jaipur, however, he was not at home. Mr. Kaushlendra was terminated from the CB firm on 29.05.2023.

5.4 They invoiced M/s Golden Feather Traders an amount of Rs.10,000.00 for filing BE per container. They had totally invoiced 8 Bills for an amount of Rs



147500.00. An amount of Rs. 1,18,000.00 was received in their HDFC Bank A/c No: 12042320000267. An amount of Rs. 29,500.00 was still due for payment.

### **Role of Customs Broker:**

6. The Customs Broker is an agent of importer. He works on behalf of the importer. He also takes authorization to work on behalf of importer. A CB, remains fully aware that omission and commission by the importer affects the working image of CB. It is a business practice that CB knows on whose behalf they are working, as CB can face investigation for omission and commission at any time. As per CB Regulation, a CB also requires to know the client. Even in the absence of such requirement it is business practice that the CB knows on whose behalf they are working as the relation between CB and importer is a long time relation. In view of the above, it appears the CB has violated Regulations 10(d), 10(e) and 10(n) of CBLR, 2018 which is discussed in detail as below:

Under Regulation 10 of Customs Brokers Licensing Regulations, 2018, obligations of Customs Broker:

A Customs Broker shall-

*(d) "advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, 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, Customs Broker M/s Modern Cargo Services Pvt. Ltd. did not advise their clients to follow the procedure of bond to bond transfer of goods neither did they bring the matter to the notice of the customs authorities which is sheer non-compliance at the end of Customs broker.

*(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;"*

In the instant case, the said CB did not exercise their duties with due diligence and failed to check any scope for fraud or loss of Government Revenue. It appears that the CB had tacitly connived with the exporter.

*(n) "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, the said CB did not verify identity and declared address either of M/s Golden Feathers Traders or of its proprietor Mr. Lakshay Kumar. The CB has never met with the importer and only dealt with a third party, Mr. Rana Thakur.

6.1 From the above facts it appears that, prima facie, Customs Broker M/s Modern Cargo Services Pvt. Ltd. (Licence no. 11/881, CB code AAACM7088BCH001) had violated Regulation 10(d), 10(e) & 10(n) 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.

6.2 In view of the above facts, the CB License held by M/s Modern Cargo Services Pvt. Ltd. (11/881) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 54/2023-24 dated 26.03.2024 and personal hearing was granted to the CB on 10.04.2024 at 12.00 PM.

**7. WRITTEN SUBMISSION OF THE CB:-** In response to the said Suspension Order, CB M/s Modern Cargo Services Pvt. Ltd. (11/881) submitted their reply



on 04.04.2024 through their authorized representative Adv. Lawrence Tauro. The CB stated that the suspension of their license had shocked and disturbed them beyond belief. It is their sincere and heartfelt belief that their license did not deserve to be suspended in such a drastic manner. The CB had denied each and every allegation which had been alleged against them as the same had been alleged without properly appreciating the facts of the case.

The CB denied all the charges categorically, as given below:

7.1 Against violation of Regulation 10(d), the CB submitted that:

a) they were appointed for Customs clearance work of import consignment "Black Pepper". The importer had submitted nine Authorization Letters for nine invoices dated between 06.09.2022 to 15.12.2022 and other required documents to them for filing the Warehouse (Into Bond) Bills of Entry with Customs for warehousing of the subject goods. The importer had submitted authorization letters, wherein it was mentioned that "upon examination of the packages of goods, if the contents found differ from those declared by them in the invoice (documents) they solely will be liable and responsible for any action taken by the Customs Authority"

b) they were appointed only for warehousing the imported goods in the Customs bonded warehouse and not appointed as Customs Broker for filing the ex-bond Bill of Entry or bond-to-bond transfer of goods. Their role was limited up to depositing the examined goods in the Customs bonded warehouse after 100% examination by the department. They completed their work of examination and depositing the goods in the Customs Bonded warehouse in a proper manner. Thereafter, the role of the bond to bond transfer and ex-bond, if any, of the impugned goods was by the importer, Customs Officer and warehouse keeper and the CB had no role to play. This, they were not aware of any clandestine removal of the impugned goods from M/s Akshay Logistics warehouse or taken to a private warehouse and were being illegally diverted to the local market to evade the payment of Customs Duty during the process of bond-to-bond transfer.

c) there was no statement on record from the importer saying that the CB had not advised them to follow the procedure of bond-to-bond transfer nor the CB or their staff had accepted in their statements that they had not advised their client on the said issue.

7.2 Against violation of Regulation 10(e), the CB submitted that:

a) they verified the classification/notification claimed by the importer and also advised the client authorized signatory, Mr. Rana Thakur, to comply with all the provisions of the Act. They filed the import documents on a reasonable belief that the goods imported were as declared in the import documents filed with the department; they had exercised due care and had put persistent efforts to ascertain the correctness of all information that they imparted to their client in connection with the work of warehousing of the import consignments of 'Black Pepper' and also advised them to follow the procedure of bond to bond transfer and to submit a comprehensive transit risk insurance policy to cover the transit of goods, equal in sum of the duty involved on the goods, in favour of the President of India.

b) The duty of the Customs Broker is limited to facilitating the proper filing of documents as received from the importer and their job was confined to the submission of the papers as given by the importer and to giving the details of the importer to the authorities as & when required.

7.3 Against violation of Regulation 10(n), the CB submitted that:

a) they had taken Authorization Letters and KYC-related documents viz. GST Registration Certificate, IEC Certificate (Proprietorship), Central Bank of India Letter with Authorized dealer Code and photo of a blank cheque, Central Bank Letter Certifying signature, photo and business address of the importer,



Authorization Letter Certifying Mr. Rana Thakur as Authorized Signatory of the company, PAN Card and Aadhar Card of the Proprietor Mr. Lakshay Kumar, PAN Card of Mr. Rana Thakur, Tata Power Electricity Bill of the office address, Income Tax acknowledgment, Statement of Accounts & Balance Sheet of the company (proprietor) filed with the Income Tax Authority for the F.Y. 2020-2021(A.Y. 2021-2022) and LUT application and acknowledgment filed on 08.04.2022 with GST authorities for verifying the antecedent of the exporter.

b) even if the business got through an intermediary, the same was not prohibited by the provisions of CBLR, 2018 as much as the authorisation had been issued by the Importer. Obtaining an Authorisation from the importer did not mean that the same should be obtained directly from the importer. Even if the authorization of the importer was obtained through an intermediary it amounted to authorisation by the importer and therefore it could not be said that there had been a violation of the regulation.

c) they collected documents such as IEC, GSTIN, etc. submitted by the importer before processing their bills of entry. Later on, if the importer was not found at the said address then they could not be held responsible for their non-existence at the address specified.

7.4 The CB further submitted that:

a) the revoking their CB license is very harsh and is directly affecting their livelihood as they are unable to conduct any business activities in their capacity as a Customs Broker.

b) their licence is very old. The CB company is a Pvt. Ltd. Company. To date, there has not been any case against them for violation of the regulations of CBLR, 2018.

c) The suspension of licence is affecting the livelihood of the Directors and all their staff. The CB informed that they have a large number of well-known and reputed clients. Further, the suspension of the CB licence has caused an irreparable loss of business reputation and has also forced their 73 employees to be unemployed.

The CB submitted various case laws in support of their argument and requested to revoke the suspension of their CB license.

**8. RECORD OF PERSONAL HEARING OF THE CB:-** In pursuance to regulation 16(2) of the CBLR, 2018, opportunity of personal hearing was granted to the CB M/s Modern Cargo Services Pvt. Ltd. (11/881). Adv. Lawrence Tauro, authorized representative of the CB appeared for PH on 10.04.2024. He reiterated their written submission, submitted vide letter dated 04.04.2024 and requested to revoke the suspension of their license.

### **DISCUSSION AND FINDINGS**

9. I have carefully gone through the records of the case, the written submissions submitted by the Customs Broker and the submissions made during the personal hearing. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

9.1 The issues to be decided in the instant case is whether the suspension Order No. 54/2023-24 dated 26.03.2024 is required to be continued or revoked.

9.2 The CB, in his defence, submitted that they were appointed only for warehousing of the imported goods in the Customs bonded warehouse and not for filing the ex-bond Bill of Entry or bond-to-bond transfer of goods. Their role was limited up to depositing the examined goods in the Customs bonded



warehouse after 100% examination by the department. They completed their work of examination and depositing the goods in the Customs Bonded warehouse in a proper manner.

9.3 I observe that the role of the CB is very important in customs clearance and they are a bridge between the customs and the importer/exporter. Hence, their duties are not restricted only to warehousing of the imported goods in the Customs bonded warehouse but as they are the frontline link, their duty is also to observe and intimate to the authorities, any shortcomings, if noticed.

9.4 In the present case, the CB was involved in the clearance of imported goods which was stored in a customs bonded warehouse, which was to be taken to another warehouse after payment of duty. I observe that it is the responsibility of the CB to advise their client to follow proper procedure for clearance of the goods, to pay the liable duty for such procedure before taking delivery of the goods, however, the CB has failed to advise the importer to follow proper procedure. The CB did not inform the importer about the instructions, circulars and public notice regarding bond-to-bond transfer of imported goods. Thus, due diligence was not taken in imparting information about procedure of clearance of goods.

9.5 From the offence report I find that the importer firm and its proprietor Shri Lakshay Kumar were not residing on the declared address. The CB, in this regard, was not diligent enough to verify the genuineness of the importer or its proprietor. Shri Kaushlendra, in his statement, stated that it was their obligation to verify the identity of the client and functioning of the client at the declared address, however, he did not do so. It shows that the CB was not complying with the corresponding provisions of CBLR, 2018.

Therefore, it appears that the CB has violated the provisions of regulation 10(d), 10(e) and 10(n) of the CBLR, 2018.

9.6 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..."*

9.7 Further, I rely on the judgement of the Hon'ble High Court of Madras in case of Cappithan Agencies vs. Commissioner of Customs, Chennai-VIII, 2015 (326) E.L.T. 150 (Mad.), has held that:

*"...Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the*



Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such a position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed."

**9.8** In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 54/2023-24 dated 26.03.2024 under regulation 16 of the CBLR, 2018 was just and proper. The said regulation reads as: -

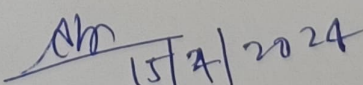
*"16. Suspension of license. - (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated."*

**10.** From the above facts, prima-facie, the Customs Broker M/s Modern Cargo Services Pvt. Ltd. (11/881) appeared to have failed to fulfil their obligations under Regulation 10(d), 10(e) & 10(n) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, CB M/s Modern Cargo Services Pvt. Ltd. (11/881) appears to be liable and guilty.

Accordingly, I pass the following order: -

**ORDER**

- I. Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16(2) of CBLR, 2018 order that the suspension of the Customs Broker Licence of M/s Modern Cargo Services Pvt. Ltd. (11/881) (AACFC6060ECH001) ordered vide Order no. 54/2023-24 dated 26.03.2024 shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018.
- II. This order is being issued without prejudice to any other action that may be taken or purported to 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 Modern Cargo Services Pvt. Ltd. (11/881) (AACFC6060ECH001),  
14, 3rd floor, Samhita Warehousing Complex,  
Off Andheri Kurla Road, Andheri East, Mumbai 400072

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai Zone I, II & III