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24/12/23

	<p style="text-align: center;">भारत सरकार Government of India वित्त मंत्रालय, राजस्व विभाग Ministry of Finance, Department of Revenue कार्यालय आयुक्त सीमा शुल्क (निवारक), उत्तर प्रदेश एवं उत्तराखण्ड Office of the Commissioner, Customs (Prev.) Uttar Pradesh & Uttarakhand अप्रत्यक्ष कर भवन, सातवां तल, विभूति खंड, गोमती नगर, लखनऊ - 226010 Apratyaksh Kar Bhawan, 7th Floor, Vibhuti Khand, Gomti Nagar, Lucknow-226010 E-mail Id : cru.ccplko@gov.in</p>
	

DIN: 20231280OF000000CE15

Date: 21-12-2023

ORDER NO. 02/TECH/2023**ORDER FOR CONTINUATION OF SUSPENSION OF CUSTOMS BROKER
LICENCE NO.02/CB/ LKO/2017 dated 12.07.2017****A. BRIEF FACTS OF THE CASE:**

A.1. Shri Abhay Narayan Singh, R/o 2/16 Jay Durga Chawl, LM Road, Dahisar(W), Mumbai, 400068 (hereinafter called as customs Broker) is holding a Customs Broker License No. 02/CB/LKO/2017 dated 12.07.2017 issued by the Commissioner of Customs, Customs (Prev.) Commissionerate, Lucknow. The license of Customs Broker is also endorsed to Delhi, Mumbai and Mundra Customs.

A.2. As per the Incident Report communicated vide letter C.No.VIII(26)132/CHA Enquiry/SNL/2023 dated 22.9.2023, it was informed by the Deputy Commissioner, Land Customs Station, Sonauli that on the basis of NCTC Alert No. 435/EXP/2023-24, an inquiry was conducted in respect of 06 shipping bill filed by the Exporters namely M/s Dhanam Enterprises and M/s Shankar Enterprises, whereupon it is revealed that Shri Surendra Kumar Sharma (G card holder), Shri Surya Prakash Sahi (H card holder) and Shri Vijay Kumar Sahani (H-Card Holder), all were authorized by Shri Abhay Narayan Singh, CHA have filed certain shipping bills in respect of goods intended to be exported. However, the goods have not actually reached the port. The said persons misguided the Customs Authorities to get their SBs/Document passed and got Let Export Order (LEO) for their consignments.

A.2. During the course of inquiry the above persons were summoned and their statement were recorded in connection with the following shipping bills intended to be used for fake export.

Sl. No.	Shipping Bill No.	Shipping Bill Date	Name of the exporter	Commodity	IGST Payment

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					status
1	3553780	29.08.2023	M/s Dhanam Enterprises	Charging Socket for e-Bike	LUT
2	3553758	29.08.2023	M/s Shankar Enterprises	Spark Plug	LUT
3	3658047	02.09.2023	M/s Shankar Enterprises	Spark Plug	LUT
4	3658051	02.09.2023	M/s Shankar Enterprises	Spark Plug	LUT
5	3710591	05.09.2023	M/s Shankar Enterprises	Spark Plug	LUT
6	3710609	05.09.2023	M/s Shankar Enterprises	Spark Plug	LUT

A.3. The above mentioned persons namely Shri Surendra Kumar Sharma (G card holder), Shri Surya Prakash Sahi (H card holder) and Shri Vijay Kumar Sahani (H-Card Holder) have owned the responsibility of knowing the fact that the goods intended to be exported were not actually reached the LCS and they misguided the customs authorities to get their SBs/Documents passed.

A.4. An action under Regulation 17 (9) of the Customs Broker Licensing Regulations, 2018 (hereinafter called as CBLR, 2018) was taken whereunder Shri Surendra Kumar Sharma (G Card holder) was debarred from transacting the business for a period of six months. The G card and H cards of the said persons have got surrendered from them.

B. CASE FOR THE DEPARTMENT:

B.1 In the instant case the employees of the Customs Broker were prima-facie found involved in execution of fake export through LCS Sonauli, the accountability of which shall lie with the Customs Broker representing the exporter as per Regulation 13 (12) of CBLR, 2018.

B.2 It appeared that the Custom Broker failed to comply with the obligations imposed upon him under the provisions of Regulation 10 of the CBLR, 2018 and appeared to have contravened the following provisions of CBLR, 2018.

- a. Regulation 10(d) of CBLR, 2018 stipulates that the customs broker shall 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;
- b. Regulation 10(e) of CBLR, 2018 stipulates that the customs broker shall

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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;

- c. Regulation 10(i) of CBLR, 2018 stipulates that the customs broker shall not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- d. Regulation 10(n) of CBLR, 2018 stipulates that the customs broker shall 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;

B.3. Based on the incident report, prima facie, it appeared that Customs Broker failed to comply with the obligations imposed upon him under the provisions of Regulation 10 of the CBLR, 2018 and Regulation 13 (12) of the CBLR, 2018. Accordingly, Customs Broker Licence No.02/CB/LKO/2017 dated 12.07.2017 was suspended vide Order dated 30.11.2023 issued vide F.No.GEN/CB/SUS/10/2023-Technical Section under Regulation 16(1) of the CBLR, 2018. The Customs Broker was granted opportunity of Personal Hearing on 08.12.2023 at 11:30 AM in terms of Regulation 16(2) of the CBLR, 2018.

C. CASE FOR THE CUSTOMS BROKER

C.1. The Customs Broker through his authorized representative ShriHarendra Kumar Pandey, Advocate, has submitted written submission dated 08.12.2023. The main points of the submission made by the Customs Broker are as under:

- a. All the three person have denied Customs Broker's role/connivance in the above matter in their statement recorded.
- b. There is no restriction for processing of Shipping Bill before arrival of export cargo at Customs Station. Therefore, the allegation of getting the Shipping Bills processed without actual arrival of cargo does not invite violation of any law. The Customs Broker has given reference of Section 50 of the Customs Act, 1962 and Regulation 4 of Shipping bill (electronic integrated declaration and paperless processing) Regulation, 2019.
- c. There is nothing in law to suggest that the Customs Broker is anyway concerned with arrival, examination and Let Export Order for exportation of goods. His job is confined to presentation of documents with Customs, meeting up query

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for any short of shortcoming/ mismatch in documentation. In the particular case, as it is on records, the exporter has provided with his IEC issued by the DGFT, PAN issued by Income Tax Department, GSTIN issued by GST Department- all authorities of the Government of India. In addition Invoices and e-way bills generated under the GST law are also handed over by the exporter. All these documents were duly verified by the C.B. and no anomaly observed to doubt bonafide of the exporter. The Customs Broker has given reference of Section 51 of the Customs Act, 1962 and Regulation 5 of Shipping bill (electronic integrated declaration and paperless processing) Regulation, 2019.

- d. Let Export Order, in itself is not sufficient to establish export of the goods until Export General Manifest (EGM) is filed and sailing of the conveyance from Indian customs area is noted. Let Export Order and supervising EGM are exclusively the domain of the Proper Customs Officer who after examination of the export goods only is expected to give LEO and the C.B. has no role to play in this regard.
- e. The allegation against the then employees that they misguided the Customs Officers about arrival of the cargo at the Customs Station in itself is bald in as much as there is no notification issued under Section 8 of the Customs Act, 1962 approving landing place and specifying limits of Customs Area of Sonauli Land Customs Station.
- f. C.B. did not hesitate in terminating their services after getting the information from the Department that they had tried to influence the Customs Officer. Further that in their statements recorded by the Departmental officers themselves, the said employee categorically stated that there was no instruction/advice from the C.B. to do so, suspension of the C.B. license prohibiting him to function at any Customs station in India is unwarranted and excessive.
- g. The Customs Broker has referred CBIC Instruction No.24/2023 dated 18.7.2023 and emphasized that Suspension is not visualized for application in routine manner or mechanical and he is constrained to submit that the instant order is issued in routine and mechanical manner without taking into consideration the factual and legal matrix of the issue.
- h. The Customs Broker has relied following case laws in support of their defence: (i) Hon'ble Calcutta High Court judgment in the

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case of CC vs Overland Agency reported in 2006 (204) ELT 554.
(ii) Hon'ble CESTAT judgment in POONAM CARGO SERVICES
Vs COLLECTOR OF CUSTOMS, DELHI.

D. RECORDS OF PERSONAL HEARING:-

D.1 Shri Abhay Narayan Singh, the Customs Broker along with his authorized representative Shri Harendra Kumar Pandey, Advocate appeared on 08.12.2023 before the undersigned for personal hearing. He re-iterated the written submission dated 08.12.2023 and requested to revoke the suspension. He has nothing more to add.

E. FACTS EMERGED AFTER THE RECEIPT OF STATUS REPORT OF ENQUIRY INITIATED BY THE DEPUTY COMMISSIONER, LCS SONAULI

E.1 The Deputy Commissioner, Land Customs Station, Sonauli vide their letter C.No.VIII(26)132/CHA Enquiry/SNL/2023/1427 dated 14.12.2023 has informed that following facts emerged during the course of enquiry-

- a. The above employees of the Customs Broker in their statement dated 05.09.2023 have themselves accepted that despite knowing the facts the goods intended to be exported have not actually reached the port, they filed the shipping bills and got Customs clearances by misguiding customs authorities.
- b. In his statement dated 05.09.2023, Shri Surendenra Kumar Sharma (G Card Holder) has stated that all the 06 shipping bills were handed over to him by a person namely Shri Amit Kumar Singh from Noida. Summon dated 29.10.2023 and 24.11.2023 were issued and delivered to Shri Amit Kumar Singh but he did not turn up.
- c. Letters dated 24.09.2023 and 12.10.2023 to the exporters M/s Dhanam Enterprises and M/s Shankar Enterprises were returned undelivered/unclaimed.
- d. Letters to jurisdictional GST authorities have been written for verification of premises and stock of the said exporters.
- e. Enquiry is still in progress.

F. DISCUSSION AND FINDINGS

F.1. I have carefully gone through all the facts and record of the case, including the status report of enquiry initiated by Deputy Commissioner, Land Customs Station, Sonauli, oral and written submission made by the Customs Broker through his advocate during the personal hearing held on 08.12.2023. The issue before me at the present instance is limited to determining whether the continuation of suspension of the customs broker is warranted or otherwise in the instant case in the light of the material on record.

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F.2. At the outset, I intend to discuss the submission of the Customs Broker that all the three person have denied Customs Broker's role/connivance in the above matter in their statement recorded. In this regard, I want to reproduce the Regulation 13(12) of CBLR, 2018 which is as below:-

"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."

From the plain reading of the above regulation, it is evident that mere denial of the role of the Customs Broker by his employee cannot refrain the Customs Broker from discharging his duties as stipulated in the regulations and therefore fully responsible for all acts or omissions of his employees during his employment.

F.3. As regard to the submission of the Customs Broker that there is no restriction for processing of Shipping Bill before arrival of export cargo at Customs Station, I am inclined to draw attention on Regulation 10 (d) of CBLR, 2018 wherein it is stated that the Customs Broker, in case of non-compliance of provisions of the Act, other allied Acts and the rules and regulations thereof, 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 employee of the customs brokers themselves accepted that despite knowing the facts that the goods intended to be exported have not actually reached the port, they filed the shipping bills and got Customs clearances by misguiding customs authorities. Thus the customs broker clearly did not fulfill the obligations as stipulated under Regulation 10 (d) of CBLR, 2018.

F.4. As regard to the Customs Broker submission that his job is confined to presentation of documents with Customs and in the particular case, the exporter has provided all the necessary documents which were duly verified by the C.B. and no anomaly observed to doubt bonafide of the exporter.

I do not agree with the customs broker contention as Shri Surendera Kumar Sharma (G Card Holder) in his statement dated 05.09.2023 has stated that all the 06 shipping bills were handed over to him by a person namely Shri Amit Kumar Singh from Noida. Shri Amit Kumar Singh, inspite of being summoned twice did not turn up which clearly indicates that the Customs Broker has accepted the documents from the person whose relation to the exporter is dubious. This being the case, the whole purpose of verification of documents is defeated i.e. to ensure that the Customs Broker has received and verified the documents submitted by the genuine client. Thus the customs broker clearly did not fulfill the obligations as stipulated under Regulation 10 (n) of CBLR, 2018.

F.5. As regard to the Customs Broker submission that Let Export Order and supervising EGM are exclusively the domain of the Proper Customs Officer who after examination of the export goods only is expected to give LEO and the C.B. has no role to play in this

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regard, I want to draw attention on Regulation 10 (i) of CBLR, 2018 wherein it is stated that the Customs Broker shall not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value.

In the instant case employees of the Customs Broker in their statement dated 05.09.2023 have themselves accepted that they have got Customs clearances by misguiding customs authorities. Thus, the Customs Broker has contravened the provisions contained in Regulation 10 (i) of CBLR, 2018.

F.6. As regard to the Customs Broker submission there is no notification issued under Section 8 of the Customs Act, 1962 approving landing place and specifying limits of Customs Area of Sonauli Land Customs Station, I want to draw attention to Notification No. 63/94-Cus. (NT), dt. 21-11-94 whereby Land Customs Station, Sonauli has been appointed as clearance of all goods or any class of goods imported or exported by land from or to Nepal Routes by which alone all goods or class of goods may pass by land or inland water into or out of India to Nepal are also specified vide the said Notification.

I do not agree with the customs broker contention, as the goods of the consignment never reached the port. I further want to draw attention on Regulation 10 (e) of CBLR, 2018 wherein it is stated that the Customs Broker shall 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. Thus, the Customs Broker has contravened the provisions contained in Regulation 10 (e) of CBLR, 2018.

F.7. I find that the defence reply submitted by the Customs Broker is not satisfactory and that ratio of the judgement relied upon by the CB is not applicable in the instant case. It appears that the Customs Broker is liable for their acts of omissions and commissions leading to contraventions of the provisions of CBLR, 2018, which amounts to breach of trust and faith imposed on the Customs Broker by the Customs. The Customs Broker Shri Abhay Narayan Singh, (Customs Broker License No. 02/CB/LKO/2017 dated 12.07.2017) have therefore, prima-facie, failed to fulfill their responsibilities as per Regulation 10 (d), 10 (e), 10(i), 10 (n) and 13(12) of Customs Brokers Licensing Regulations, 2018.

F.8. In the light of above, I conclude that there are ample evidences which require a thorough investigation under provisions of CBLR, 2018. The investigation is presently undergoing at Land Customs Station Sonauli and therefore the suspension of the Customs Broker License No. 02/CB/LKO/2017 dated 12.07.2017, issued to Shri Abhay Narayan Singh is liable to be continued until the outcome of the investigation, when a final decision on

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this aspect shall be taken by the undersigned, after completion of all formalities as enumerated under the relevant Regulations under CBLR, 2018.

G. Accordingly, I pass the following order;

ORDER

I, Commissioner of Customs, Customs (P) Commissionerate, Lucknow, in exercise of powers conferred upon me, under the provisions of Regulation 16(2) of Customs Broker Licensing Regulations, 2018, hereby order for continuing the suspension of the Customs Broker License No. 02/CB/LKO/2017 dated 12.07.2017, issued to Shri Abhay Narayan Singh, R/o 2/16 Jay Durga Chawl, LM Road, Dahisar(W), Mumbai, 400068 as made vide Suspension Order dated 30.11.2023 issued vide File No. F.No.GEN/CB/SUS/10/2023-Technical Section, until further orders. I also order for initiation of proceedings under the provisions of Regulation 17 of Customs Broker Licensing Regulations, 2018.

Signed by Ranjeet Kumar
Date: 21-12-2023 16:51:54
Reason: Approved
(RANJEET KUMAR)

COMMISSIONER OF CUSTOMS

To,
Shri Abhay Narayan Singh,
R/o 2/16 Jay Durga Chawl,
LM Road, Dahisar(W)
Mumbai-400068

Copy forwarded for information and necessary action to –

1. The Dy./Assistant Commissioner (CB), O/o the Commissioner of Customs (Airport and General), New Customs House, New Delhi-110037.
2. The Deputy / Assistant Commissioner (Policy), O/o the Commissioner of Customs (Airport & General), New Customs House, Near IGI Airport, New Delhi-110037 for kind information and necessary action please.
3. The Deputy / Assistant Commissioner (Policy), Policy Wing Raxaul, Land Customs Station, Raxaul-845305 for kind information and necessary action please.
4. The Deputy/Assistant Commissioner, (Customs Broker Section), Customs House, Mundra Port, MP & SEZ, Mundra – 370421 (Kutch).
5. The Deputy/Assistant Commissioner (General), Customs Broker Section, New Customs House, Ballard Estate, Mumbai-400001.
6. The Deputy/Assistant Commissioners, Division-Lucknow /Nautanwa/ Varanasi/ Bareilly/ Gorakhpur/ CCSI Airport Lucknow /LBSI Airport Varanasi / ICD JRY / ICD Chakeri / ICD Panki / ICD Agra/ SIIB Lucknow

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7. The Superintendent, Adjudication, Customs Headquarters, Lucknow for causing hearing on the date fixed.
8. The Superintendent (Systems), Customs (Prev.) Commissionerate, Lucknow for uploading on official website.