



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)**

कस्टम्ब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,

**CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,**

बेलार्डइस्टेट, मुंबई - I

**BALLARD ESTATE, MUMBAI - I**

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F.NO. CUS/2712/2022-CBS

Date: 25.01.2023

DIN: 20230178NX0000610927

**ORDER NO. 70/2022-23**

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, Chunwala Building, 38-Kolsa Street, Pydhonic, Mumbai – 400003 were 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 were 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 gave 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 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 –*

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*Provided further that no drawback shall be allowed: -*

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*(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.

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 that there was no physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.

vi) As export goods were procured from local market which were 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.

11.2 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 verified by CHA 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.

12. On analysis of the Offence Report, it appears that the CB did not advise 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, the CB appears to have violated Regulation 10(d) of CBLR, 2018.

*Regulation 10(d): "A 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"*

12.1 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(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"*

12.2 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(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;"*

12.3 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(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;"*

12.4 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(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"*

12.5 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.

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

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.

14. Customs Broker M/s. O.K. Cargo Craft Pvt. Ltd, (11/887) license was suspended vide Order No. 58/2022-23 dated 28.12.2022 and was given opportunity of 'Personal Hearing' in this matter on 09.01.2023. Advocate Shri R.K. Tomar appeared for personal hearing on behalf of CB and submitted their submissions.

#### **RECORD OF PERSONAL HEARING & WRITTEN SUBMISSIONS OF THE CB**

15. In pursuance to Suspension Order No. 58/2022-23 dated 28-12-2022, Advocate R.K. Tomar attended Personal Hearing on 09.01.2023 at 12:00 Noon and CB also submitted their written submission vide letter dated 09.01.2023.

**16.** During Personal Hearing, Representatives of CB reiterated their written submission dated 09.12.2022. Representatives of CB further stated that the subject Shipping Bill pertains to 2012-13. In this regard, Suspension under Reg 16(1) of CBLR, 2018 (Earlier CBLR, 2013) is not warranted. CB, vide their representatives requested to set aside Suspension Order pending further Inquiry.

**17.** CB vide their written submission dated 09.01.2023 submitted that the events complained of, are of the period 2012-13 and the same cannot constitute ground for immediate action in December 2022. CB further submitted that during intervening period of 10 years, they have been functioning as Customs Broker and attended to imports on which crores of Rupees of duty has been paid and to exports of the value of value of crores of Rupees, without having caused any prejudice to the interests of Revenue.

**18.** CB has further relied on the following case laws:

- Hon'ble Supreme Court judgement dated 11-10-2007 in State of Punjab vs. Bhatinda District Co-op Milk Union Ltd. Reported vide 2007 (217) ELT 325 (SC) the Hon'ble Supreme Court has held that –

"It is trite that if no period of limitation has been prescribed, statutory authority must Exercise its jurisdiction within period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and abilities thereunder and other relevant factors"

- SpieCapag S.A. Vs the office of the Commissioner of Customs, Mumbai reported vide 2022(8) TMI 15-Bombay High Court, where the Hon'ble High Court has held that "Long delay will deprive a party from marshalling the documents or witnesses as there is always a possibility of documents or the witnesses disappearing or ceasing to exist after such a long gap".

- Jairath International Vs. Union of India reported vide 2019 (370) E.L.T. 116 (P & H), the Hon'ble High Court Punjab & Haryana has held that "on the question of reasonable period of limitation of issue show cause notice raising demand of duty drawback, relying upon judgment of Hon'ble Supreme court in State of Punjab versus Bhatinda District Co-Op. Milk P. Union Ltd. 2007 (217) ELT 325 and this court in Gupta Smelters Pvt. Ltd. versus Union of India 2019 (365) ELT 77 (P&H), GPI Textiles Limited versus Union of India 2018 (362) ELT 388 (P&H), CCE Vs Hari Concast

(P) Ltd. 2009 /242} E.L.T. 12, we have held that period of 5 years from the date of export / assessment is a reasonable per/off.

**19.** CB has further submitted that based on the above judicial rulings, it is submitted that the action initiated under the CBLR 2018 (as also the issuance of the subject predicate SCNs), the proceedings are barred by limitation. Any adverse action against the CB is violative of the judicial precedents and bad in law. wherein it has been held that the test of necessity of immediate action was not satisfied in view of substantial time gap between incident of misconduct on part of CB and the order of suspension of CB license.

**20.** Regarding valuation, CB has submitted that the Noticee has never found the declared value to be highly inflated. In fact, the export goods were examined by the Customs officer at ACC, Mumbai and values thereof were invariably verified by the Customs Officer examining the export goods. Under the circumstances, when there was no discrepancy noticed by the CB regarding valuation, and the valuation aspect was examined by the Customs Officer, the CB cannot be alleged to have done anything wrong or violative of the law or the regulations.

**21.** Regarding violation of 10(d) CB has submitted that there was nothing in the said SCN to suggest that the CB did not meet the exporter's staff and key personnel and that there was no occasion for the CB to meet its obligation under Regulation 10(d) of the CBLR. It is also not on record anywhere that the CB did not advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. The CB has checked each and every document in respect of the said 04 export consignments and found every detail as per law. The same have been verified by the Customs Officers also and they have also found everything in order and thereafter only allowed the exports.

**22.** Regarding violation of 10(e) CB has submitted that the CB has very diligently ascertained the information that he has imparted to the exporter with reference to the work related to clearance of the export cargo.

**23.** Regarding violation of 10(f) CB has submitted that the CB has abetted the exporter by declaring incorrect value of the goods in the Shipping Bills against fake invoices to avail undue drawback is not only incorrect, far from truth but also lack logic as the export goods and export documents including the so-called fake invoices (which in fact are real and genuine) were scrupulously verified and

checked by the Customs Officers and found in order. Therefore, this allegation is also only an assumption and the same is neither correct nor proved.

**24.** Regarding violation of 10(k) CB has submitted that CB has maintained the records very diligently. The CB has maintained records like KYC and Shipping Bills which are being produced herewith for verification. Further, the exports related to the present case pertain to a period which is more than 06 years old and there are no prescribed time limitations under the CBLR or the Customs Act, 1962 for which the CB has to maintain the records. Still, the relevant records, like KYC and Shipping Bills, are being produced herewith for verification and consideration of the Competent Authority.

**25.** In respect of violation of 10(n) CB has submitted that they have duly verified the Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of the exporter and functioning of the exporter at the declared address by using reliable, independent, authentic documents, data or information. Further, the exporter is still available and he can come to the office of the Competent Authority [the Hon'ble Pr. Commissioner of Customs (Gen.), Mumbai] as and when called. He is only a phone call away and always available for presenting his side of the case.

**26.** Regarding violation of 10(q) CB has submitted that it only one Summons was issued to the CB and at that time, he was travelling for medical emergency as his mother was sick. This was stated very clearly in the letter dated 06-05-2022 by the CB.

27. Further CB submitted that during the relevant period i.e., 2016, the IEC of the exporter M/s. Janman Lifestyle Pvt. Ltd. was under alert as the investigations against the exporter were underway. The exporter always accompanied the CB and presented himself with the export goods as owner of the said goods before the Customs Officer examining the said goods. Therefore, the CB has not only complied with the CBLR but also ensured that in case any discrepancy is noticed in the export goods, the exporter himself would be at the spot to explain the same.

#### DISCUSSIONS AND FINDINGS

**28.** I have carefully gone through the records of the case, laws, rules, regulations relevant to the case, oral and written submissions made by the CB through Advocate R.K. Tomar. The issue before me at present is limited to determine

whether the continuation of suspension of the CB license in the instant case is warranted or otherwise in light of the material evidence on record.

**29.** I find that the license of the Customs Broker M/s O.K. Cargo Craft Pvt. Ltd, (11/887) was suspended vide Order No. 58/2022-23 dated 28.12.2022 based on the Offence Report received from SIIB(X), ACC that the CB have failed to fulfil their obligations laid down under Regulation 10(d), 10(e), 10(f) 10(k), 10(n) & 10(q) of CBLR, 2018.

**30.** I have carefully perused written and oral submission made by CB wherein they have cited various judgements to substantiate that suspension of license is not warranted in the subject case. I find that during intervening period of 10 years since the incident, they have been functioning as Customs Broker without having caused prejudice to the interests of Revenue.

**31.** I find that 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.

**32.** I find that 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 Janman Lifestyle Pvt Ltd. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.

**33.** I find that it was the responsibility of the CB to guide Exporter M/s. Janman Lifestyle Pvt Ltd. with respect to furnishing declarations at the time of export in format annexed to Circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007 – DBK. It was the responsibility of the CB to ensure that Exporter M/s Janman Lifestyle Pvt Ltd. declares the name and complete address of the traders from whom goods have been purchased in order to claim Drawback. Further, CB should have advised the Exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995.

**34.** I find that CB has a very crucial role in the clearance of goods through Customs which involves application of different laws and detail procedures

which are often complex. CB makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods, conditions under which they were imported/exported, their value etc. It is the responsibility of CB to have requisite knowledge to undertake such clearances. The very objective of CBLR, 2018 (Earlier CBLR, 2013) is to ensure that CB acts honestly and efficiently in the conduct of his business. It is not difficult to foresee the consequences that may arise if CB acts in a negligent manner.

**35.** I find it pertinent to mention the judgement of the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in Civil Appeal no. 2940 of 2008 which approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. - Mumbai)]: -

*"The 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 viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these 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. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."*

**36.** The main consideration before me at present is limited to determining whether continuation of suspension of CB license is warranted or otherwise in the instant case in light of the material on record. I find that the suspension order No. 58/2022-23 dated 28.12.2022 has alleged violation of Regulation 10(d), 10(e), 10(f), 10(k), 10(n), 10(q) of CBLR, 2018. At this stage, I would like the subject case to be inquired by the Inquiry officer in order to conclusively establish role of the CB.

**37.** Also Keeping in mind the principle of proportionality of punishment and considering the livelihood of CB and their employees, I find that the submissions made by the CB appear 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.

**38.** Accordingly, I pass the following order:

**ORDER**

**38.1.** 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 Customs Broker Licence M/s O.K. Cargo Craft Pvt. Ltd, (11/887) (PAN: AAACO3043J) which was suspended vide Order no. 58/2022-23 dated 28.12.2022, pending further Inquiry Proceedings under CBLR, 2018 (Earlier CBLR, 2013).

**38.2** 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

  
(SUNIL JAIN)

**Principal Commissioner of Customs (G)**  
**NCH, Mumbai - I**

To,

M/s O.K. Cargo Craft Pvt. Ltd, (11/887) (PAN: AAACO3043J)  
OFFICE NO 28, AMBIKA TERRACE, 1ST FLOOR, 66/4 CLIVE CROSS LANE,  
DANA BUNDER, MASJID (EAST) MUMBAI-400009

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
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