



OFFICE OF THE COMMISSIONER
CUSTOM HOUSE, KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA
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A	फाइल संख्या/ File No.	S/7-28/CHA/2014
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-14-2018-19
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPALCOMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	15.02.2019
E	जारी करने की दिनांक/Date of issue	15.02.2019
E	नोटीसी पार्टी /Noticee/Party	M/s Mat Shipping (Proprietor - Shri Mritunjay Dasgupta), Formerly known as M/s Flamingo Shipping, Gandhidham

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

.2 Any person aggrieved by this Order - in - Original may file an appeal under Section 129A(1)(a) of Customs Act, 1962 read with Rule 6(1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A.-3 to:

"केंद्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण"

पश्चिम क्षेत्रीय बेंच

द्वितीय तल बहुमाली भवन आसरवा ,

गिरधर नगर ब्रिज के समीप ००४ ३८० -अहमदाबाद ,गिरधर नगर ,

**Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5.00/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5.00/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), 1982 और सीमा शुल्क अधिनियम, 1962, के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का %7.5 भुगतान करना होगा।

An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

**Subject: - Action under Regulation 16 of CBLR, 2018 against M/s Mat Shipping ,
Gandhidham (Proprietor - Shri Mritunjay Dasgupta).**

BRIEF FACTS OF THE CASE:

M/s Mat Shipping (Proprietor – Shri Mritunjay Dasgupta), earlier known as M/s Flamingo Shipping, having registered office at Plot No. 45, T. No. 10, Sector No.7, Gandhidham (hereinafter referred to as 'the CB') were granted Custom Broker License No. KDL/CB/52/2014 (PAN No. AHLPD0367P) dated 29.04.2014, valid up to 28.04.2024, by Commissioner of Customs, Custom House, Kandla under regulation 7(1) of CBLR,2013. M/s Mat Shipping (formerly M/s Flamingo Shipping) was also permitted to work as Custom Broker at Mundra, Ahmedabad, Jamnagar and Mumbai, by the Jurisdictional Commissioner of Customs. The said permission was valid up to 28.04.2024 i.e. till the validity of the parent license.

2. An offence report was received from the Principal Additional Director General, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad vide F.No. DRI/AZU/GRU/Sanari-Petro/Int-06/2018 dated 04.02.2019 outlining the role of the Custom Broker in the case of import of Superior Kerosene Oil (SKO), in the guise of Industrial Composite Mixtures Plus/ Low Aromatic White Spirit at Kandla port and for the necessary action against the CB M/s Mat Shipping under Customs Brokers Licensing Regulations, 2018 {erstwhile Regulation of CBLR,2013}.

2.1 It is brought out that DRI, Ahmedabad is conducting an enquiry into import of SKO in the guise of Industrial Composite Mixture Plus/Low Aromatic White Spirit at Kandla Port. In this regard, one consignment vide Bill of Entry No. 7730154 dated 21.08.2018 has been given out charge by Customs authorities, Kandla on the basis of test report obtained from Customs House Laboratory, Kandla. During the investigation, it is prima facie revealed that the test report, issued by the Customs House Laboratory, Kandla, appeared not to be genuine and to avoid the material getting classified as SKO which is of restricted nature, illegal gratification was passed on to the officers of the laboratory.

2.2 Further, resample drawn from consignment filed under Bill of Entry No. 7730154 dated 21.08.2018 and six other samples forwarded to CRCL, Delhi. Test results obtained from CRCL, Delhi confirms that, representative samples drawn from consignments meet the parameter of Superior Kerosene Oil (SKO). After obtaining the test report from CRCL, Delhi, consignments are seized by DRI for further investigation.

2.3 During the investigation, the role of Custom Broker M/s. MAT Shipping has come into picture and accordingly search was conducted at premises of Customs Broker M/s MAT Shipping at Gandhidham and statement of Shri MritunjayDasgupta, Proprietor of M/s MAT Shipping was recorded under Section 108 of the Customs Act,1962 on 29.08.2018. During his statement, he, inter-alia, stated that all the work relating to clearance of Industrial Composite Mixture Plus' are given to him by M/s Shree Sanari Shipping, Gandhidham; that all the documents related to filing of bill of entry i.e. invoice, packing list, Bill of Lading, Country of Origin certificate were provided on e-mail and checklist were also being approved by M/s Shree Sanari Shipping; that on submission of samples in Kandla Lab, he approached the Chemical Examiner, Kandla Laboratory and request him to issue the report taking care of the final boiling point of the cargo; that it was being done on instructions from Shri

Virbhadra Rao and Shri Iqbal of Shree Sanari Shipping; that he was aware that the imported product actually falls under the restricted category but to adjust the test report, he was paying in cash Rs. 40,000/- to Rs. 1,00,000/- to Chemical Examiner of Kandla Laboratory.

2.4 Further, statement of Shri Mritunjay Dasgupta, Proprietor of M/s. MAT Shipping was recorded under Section 108 of the Customs Act, 1962, on 04.10.2018. During his statement, he, interalia stated that he raises bills to M/s. Shree Sanari Shipping and they in turn raise bills to the customers i.e. importers; that after perusing the test reports of CRCL, New Delhi, Shri Mritunjay Dasgupta stated that in each consignment, the test report confirms the goods to be meeting requirement of SKO (Kerosene) as per IS 1459:1974; that the parameters tested by the laboratory and its results are also mentioned in each of the above Test Reports; that on being asked to comment on the test report of CRCL, New Delhi, he stated that these are findings of Customs Laboratory and he believes the same would be correct; that on being asked about amount given to Chemical Examiner Kandla Lab, as stated by him in his earlier statement dated 29.08.2018, he reiterated that he used to meet Shri R.P. Meena, Chemical Examiner Kandla to get favourable test report.

2.5 Shri Mritunjay Dasgupta, Proprietor of M/s MAT Shipping who handles clearance activities of the entity in the capacity as the Custom Broker is responsible for having indulged in the act of smuggling of SKO. Shri Mritunjay Dasgupta was very much aware that the cargo imported in the name of ICMP and LAWS is actually of 'Restricted' category but he involved himself in illegal gratification to officers of Custom House Laboratory, Kandla. Shri Virbhadra RaoIlla of M/s. Shree Sanari Shipping has also facilitated other importers by way of manipulating test reports through Chemical Examiner at Kandla Laboratory in order to clear the consignment having restricted nature. Shri Virbhadra RaoIlla stated the names of importers viz. M/s. V.V. Enterprises, M/s. Jai Mata Chintpurni, M/s. G.R. Pahwa, M/s. Janpriya and M/s. Shagun Enterprises on behalf of whom he got the test results manipulated by the Chemical Examiner through Shri Mritunjaya Dasgupta, Proprietor of CB firm M/s. MAT Shipping. The deals between Shri Virbhadra RaoIlla and Shri Mritunjay Dasgupta for getting the favourable test reports by way of paying illegal gratification to the Chemical Examiner is also confirmed from the WhatsApp chat held between the duo and confirmed by Shri Virbhadra RaoIlla in his statements dated 03.10.2018 and 04.10.2018. Shri Mritunjay Dasgupta had knowingly committed offence/s under Sections 132, 135(1)(a) and (b) of the Customs Act, 1962 punishable under Sections 132 and 135 (1) (i) (A) of the Customs Act, 1962. Since, the case fulfilled the requirement of the provisions of Section 104(1) of Customs Act, 1962 and was well covered by Board's Circular No. 38/2013-Cus. Dated 17-9-2013 as amended by Cir-28/2015 dated 23.10.2015, hence Shri MritunjayDasgupta was arrested by DRI on 05.10.2018 under Section 104 of the Customs Act, 1962.

3. The investigation conducted so far, had clearly revealed the entire act of smuggling of Superior Kerosene Oil (SKO), in the guise of Industrial Composite Mixtures Plus/ Low Aromatic White Spirit at Kandla port under Bill of Entry No.7730154 dated 21.08.2018 was planned and carried out by Shri Mritunjay Dasgupta, Proprietor of M/s Mat Shipping along with the help of his accomplices. He

has admittedly played an active role in the attempted smuggling of SKO. He was very much aware that the cargo imported in the name of ICMP and LAWS is actually of 'Restricted' category but he involved himself in illegal gratification to officers of Custom House Laboratory, Kandla for getting the favorable/manipulated test reports and for the same he was arrested by DRI on 05.10.2018.

3.1 From the above it appeared that M/s Mat Shipping failed to obtain authorization, KYC, other documents from the Importer as they were receiving documents through email only from the middleman instead of importer and also failed due diligence to ascertain the correctness of any information related to imports and importer. Further, they also failed to advise their client to comply with provisions of the Customs Act, 1962. Investigations made so far had revealed that they were involved in dubious activities in doubtful manner. The above act of M/s Mat Shipping resulted in deliberate attempt to import the restricted goods i.e SKO by the importer, with intent to evade their liability from the Govt. enforcement agencies. Therefore, they failed to observe the obligations entrusted upon them under various clauses of Regulation 10 of the CBLR, 2018.

4. As per Regulation 13(12) of Customs Brokers Licensing Regulations, 2018 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. M/s Mat Shipping failed to supervise the activities of their Proprietor Shri Mritunjay Dasgupta, who indulged in the act of smuggling of Superior Kerosene Oil (SKO). Thus, the CB have violated the provision of Regulation 13(12) of CBLR, 2018.

5. From the above, it appeared that;

5.1 The Custom Broker M/s Mat Shipping suppressed the material facts from the Customs authorities. They failed to comply with the Regulation 10(a) of CBLR, 2018 in as much as they failed to obtain proper authorization from the Importer by whom they were employed as Customs Broker for clearance of import of subject goods and therefore, they failed to produce original authorization before the authority.

5.2 They failed to comply with the Regulation 10(d) of CBLR, 2018 in as much as they failed advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, Kandla regarding the cargo, which is of restricted nature though they are much aware for the cargo.

5.3 The CB also failed to ascertain correct description, nature of goods before presenting the cargo for examination to the Customs authorities and cargo was found as Superior Kerosene Oil (SKO), mis-declaration were detected by DRI. Thus, it appears that the CB did not exercise due diligence to ascertain correctness of the information from their client and thereby failed to fulfil the obligations mentioned under Regulation 10(e) of CBLR, 2018. Moreover, they themselves indulged in the act of smuggling of SKO and involved himself in illegal gratification to officers of Custom

House Laboratory, Kandla to get the favorable/manipulated test reports and thereby failed to fulfill the obligations mentioned under Regulation 10(i) of CBLR, 2018.

5.4 The CB have failed to fulfill the obligation given under 10(f) of CBLR,2018 in as much as they failed to inform their clients the orders, instructions or public notice relating to clearance of cargo issued by the Competent Authority.

5.5 Further, they failed to fulfil the obligation given under Regulation 10(m) of CBLR,2018 in as much as they did not inform the facts of mis-declared/undeclared goods, which were restricted in nature to the Customs Officers immediately and failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay.

5.6 As per their statements, they had received the all import documents through email only. They failed to comply with the Regulation 10(n) of CBLR, 2018 in as much as they failed to verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of their client and functioning of their client at the declared address by using reliable, independent, authentic documents, data or information.

6. Regulation 16 of CBLR,2018 - 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 agent is pending or contemplated.

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.

(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner or Commissioner of Customs, as the case may be, shall within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:

Provided that in case the Principal Commissioner or Commissioner of Customs as the case may be, passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 17.

7. In view of the facts enunciated above, it appeared that the CB has contravened/failed to comply with above discussed provisions of Customs Brokers Licensing Regulations, 2018. I am of the considered opinion that the license of the CB M/s Mat Shipping is required to be placed under immediate suspension as per Regulation 16 of Customs Brokers Licensing Regulations (CBLR),2018 read with Regulation 10 of CBLR, 2018 to prevent further misuse of the Customs Broker Licence

and to safeguard the interest of revenue, till the completion of investigation being Conducted by DRI, Ahmedabad.

7.1 If any other relied upon documents are sent by DRI, Ahmedabad at the later stage and if department considers it fit for action against the said CB under any other regulations also, that will be issued separately after receipt of the same.


8. Now, therefore, I, the Principal Commissioner of Customs, Kandla, in exercise of powers conferred under Regulation 16(1) of CBLR, 2018 read with regulation 10 of CBLR,2018;

ORDER

(a) Suspend the Custom Broker License No. KDL/CB/52/2014 (PAN No. AHLPD0367P) dated 29.04.2014, valid up to 28.04.2024, issued to M/s Mat Shipping (Proprietor - Shri Mritunjay Dasgupta), earlier known as M/s Flamingo Shipping, having registered office at Plot No. 45, T. No. 10, Sector No.7, Gandhidham, with immediate effect, and

(b) Pursuant to (a) above, all the Identity cards issued to the said CB, their Directors / Partners / Proprietor, employees, etc., shall be surrendered to the CBLR section of this Custom House immediately.

9. Now, therefore, I, the Principal Commissioner of Customs, Kandla in exercise of powers conferred under Regulation 16(2) of CBLR, 2018 grant a post decisional hearing on **26/02/2019 at 11.00 hrs.** to the said CB - M/s Mat Shipping (Proprietor - Shri Mritunjay Dasgupta), earlier known as M/s Flamingo Shipping, Gandhidham.


(SANJAY KUMAR AGARWAL)
Principal Commissioner

F.No. S/7-28/CHA/2014

Date :15.02.2019

To
M/s Mat Shipping
(Proprietor-Shri Mritunjay Dasgupta),
Formerly known as M/s Flamingo Shipping,
Office at Plot No. 45, T. No. 10, Sector No.7, Gandhidham

Copy to :-

1. The Chief Commissioner of Customs, Custom Gujarat Zone, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House **Mundra** for the information and necessary action.
3. The Principal Commissioner/Commissioner of Customs, Custom House **Ahmedabad** for the information and necessary action.
4. The Principal Commissioner/Commissioner of Customs, Custom House **Jamnagar** for the information and necessary action.
5. The Principal Commissioner/Commissioner of Customs, New Custom House, Ballard Estate, **Mumbai** for the information and necessary action.
6. All Section Heads, Custom House, Kandla.
7. The Joint Commissioner of Customs, EDI Section, Custom House, Kandla with a request to block the CB in system.
8. Office copy.
9. Notice Board