



OFFICE OF THE COMMISSIONER
CUSTOM HOUSE, KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA
Phone : 02836-271468/469 Fax: 02836-271467

A	फाइल संख्या/ File No.	S/7-57/CHA/2005
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-01-2019-20
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPAL COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	11.04.2019
E	जारी करने की दिनांक/Date of issue	11.04.2019
F	आदेश मूल सं, दिनांक/ Order-in-Original No & date	MCH/ADC/PK/114/2018-19 dated 26.02.2019 (F.No. VIII/48-25/Adj/ADC/MCH/2017-18)
G	नोटीसी पार्टी /Noticee/Party	M/s B.N.Thakker and Company, Room No. 207, 2 nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201

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 सेवाकर अपील अधिकरण"

पश्चिम क्षेत्रीय बेंच

द्वितीय तल, आसरवा बहुमाली भवन

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 ड्यूटी/ 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 B.N.Thakker and Company, Gandhidham.

BRIEF FACTS OF THE CASE:

M/s B. N. Thakker and Company, Room No. 207, 2nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201 (hereinafter referred to as 'the CB') was granted Custom Broker License No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E) dated 15.03.1994, valid up to 13.03.2027, by Commissioner of Customs, Custom House, Kandla under regulation 10(1) of CHALR,1984 { now regulation 7(2) of CBLR,2018.

2. An offence report along with Order-In-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, were received on 26.03.2019 from the Additional Commissioner (CBS), Custom House Mundra vide F.No. S/07-46/Misc-CB/CHM/2018-19 dated 15.03.2019, outlining the role of the Custom Broker in the case of export of cheap quality overvalued goods viz Polyester Baby Rompers, Polyester frock, Ladies undergarments with an intention to avail higher amount of drawback and for the necessary action against the CB M/s B. N. Thakker and Company under Customs Brokers Licensing Regulations, 2018.

2.1 It is brought that on the basis of a specific information that some unscrupulous exporters are exporting cheap quality goods viz., Polyester Baby Rompers, Polyester frock, Ladies undergarments by overvaluing their export cargo and intend to avail higher amount of drawback on the same, the officers of Special Intelligence and Investigation Branch (SIIB), Customs House, Mundra examined the following cargos:

Table - 1**(Amount in INR)**

Sr. No.	Name of Exporters M/s	S. B. No. and date	Description of Goods	No. of Pkgs. (ctns.)	Qty of goods (pcs.)	Ass. Value Declared (CIF) INR	Draw back claimed INR
1	Wafa International	4477415/ 02.03.17	Polyester Baby Romper	60	14400	7163251	542944
2	- do -	4488745/ 02.03.17	Polyester Frock	60	18000	10478160	792000
3	Global Enterprises	4443537/ 01.03.17	- do -	60	18000	10478160	792000
4	Super Trading Co.	4477514/ 02.03.17	Ladies Under Garments	59	17700	4683420	265500
5	Monarch Collection and Trading	4484298/ 02.03.17	Polyester Baby Romper	55	18480	9107267	609840
6	Girri Enterprise	4442876/ 01.03.17	Ladies Under Garments	56	17700	4507791	265500

2.2 The aforesaid goods under the aforesaid 06 shipping bills were examined and seized by the SIIB Officers. Each of the exporters, requested the Deputy Commissioner (Export) that their supplier mistakenly had forwarded low quality cargo whereas they had asked their supplier to send best quality which was well packed cargo at Mundra CFS. Finally they requested to permit them to export their cargo under the cover of new invoice enclosed with their request letter.

2.3 Subsequently, market enquiries for each of the seized cargo were conducted on 21.03.2017 wherein the customs broker also accompanied the customs officers. The outcomes of the market enquiries are as under:

Table - 2

(Amount in INR)

Sr. No.	Name of Exporters M/s	S. B. No./ date	Description of Goods	Assessable value declared (per piece)	Value (per piece) as per market enquiry
1	Wafa International	4477415/ 02.03.17	Polyester Baby Romper	497	150 - 200
2	- do -	4488745/ 02.03.17	Polyester Frock	582	125 - 150
3	Global Enterprises	4443537/ 01.03.17	- do -	582	150 - 200
4	Super Trading Co.	4477514/ 02.03.17	Ladies Under Garments	265	100 - 125
5	Monarch Collection and Trading	4484298/ 02.03.17	Polyester Baby Romper	493	150 - 200
6	Girri Enterprise	4442876/ 02103.17	Ladies Under Garments	255	100 - 125

2.3.1 From the market enquiries conducted in presence of the authorized representatives of the exporters, i.e., Customs Brokers, it was clear that the goods contained in the shipping bills were overvalued **2 to 6 times** than the prevailing market price. All the shipping bills are filed under the cover of drawback scheme as mentioned in table 1 above.

3. It is brought out that during the course of investigation of the case summons were issued to the aforesaid exporters & Custom Broker under section 108 of the Customs Act, 1962. No Exporter appeared for the statements; however statement of various concerned persons along with the CB employees/authorized person were recorded by Customs Officers. The brief of statements of CB employees are as follows:

3.1 Statement of Shri Sagar Thakker, manager cum authorized person of the Customs Brokers M/s B N Thakker & Company, was recorded under Section 108 of the Customs Act, 1962, before the Custom Officers on 27.04.2017, wherein he inter-alia stated that he is associated as Manager, in M/s B N Thakker and Co; since 2014; that M/s B N Thakker is a partnership firm; that their licence is registered as R/2/1994 at Customs House, Kandla; that he used to supervise all work done by his staff related to export cargo *viz.* filling of shipping bills, dock examination of goods, stuffing permission by dock preventive; that the aforesaid 06 nos. of shipping bills were filed by them through ICEGATE; that they came to know about the exporters through one forwarder Sh. Manoj Kannar, Director of M/s Samar Shipping; that they are not in direct contact with any of the exporters; that they received whole set of documents *viz.* Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website; that they had pre-knowledge about overvaluation of the cargo; that Sh. Manoj Kannar had instructed them to file the shipping bills; that they got the approval of the check list for the shipping bills to be filed from Sh. Manoj Kannar; that they filed the shipping bills to cart the cargo since the CFS was not allowing them for carting without filing the shipping bills.

3.2 Statement of Shri Manoj Kannar, Proprietor of M/s Samar Shipping, Gandhidham (FORWARDER), was recorded under Section 108 of the Customs Act, 1962, before the Custom Officers on 28.04.2017, wherein he inter-alia stated that he was doing business related to forwarder from Mundra to almost all locations in the world; that he had done some business with M/s B N Thakker and Co.; that the work

related to forwarder (booking of container) of M/s B. N.Thakker used to be done by him; that he was contacted by Shri Sagar Thakker and they finalized the rates of Customs Clearance; that he agreed with the statement dated 27.04.2017 of Shri Sagar Thakker; that one Sh. Dinesh Bhanushali S/o Bhanushali Nanji R/o Managl das Ratadiya Falia, Deriper, Tera, Kachchh, contacted him through his mobile no. 98245 64329, for export of the impugned cargo through Mundra Port; that this was his first dealing and he had not provided any containers to the exporters in past; that the he had received the set of documents viz. Invoice, packing list, KYC through Shri Dinesh Bhanushali though courier; that he had not seen the cargo.

4. From the scrutiny of the export documents submitted by the exporters, statements & market enquiry; it was revealed that the all the exporters wanted to export wearing apparels i.e. Polyester Baby Romper, Polyester frocks and Ladies under Garments to M/s Trends Creations LLC & M/s Trends City General Trading LLC Dubai, UAE. The export cargo was cheap which was not only having low quality but also overvalued by the exporters. The value of the export cargo varied from INR 45 Lac to INR 104.78 Lac and the amount of drawback thereon as claimed by the exporters varied from INR 2.65 Lac to INR 7.92 Lac. Whole of the cargos were being exported to Dubai that too to one company only. Initially the exporters tried to amend the export documents, however, finally three exporters, out of five, surrendered their cargo to Customs for auction purpose willingly.

4.1 During his voluntary statement dated 27.04.2017, Shri Sagar Thakker, authorized signatory of the Customs Brokers admitted that he had not seen the cargo, that the KYC was verified through DGFT Website only; that the documents were received through their forwarders M/s Manoj Kannar, moreover the check list was also got approved from him. Sh. Manoj Kannar in his voluntary statement dated 28.04.2017, admitted that he had not seen the cargo; that the documents were received by him through one Dinesh Bhanushali; that he agreed to the contents of the statement of Sh. Sagar Thakker.

4.2 The Customs Broker M/s B.N. Thakker did not receive the documents directly from the exporters and failed to produce the exporters before the Customs Authorities, they did not checked the cargo and received the documents through their forwarder which also had received the documents through another person, which was not found existing at the declared address. The customs broker vetted the check list from the forwarder. Thus none of them knew the exporters personally or had at any point of time were exposed to/ faced the exporters. They had pre-knowledge about overvaluation of the cargo.

4.3 From the foregoing discussions in *para-supra* it appeared that the exporters were members of a syndicate, whose sole intent was to export the impugned cargo and avail drawback. The act of omissions and commissions done by the exporters, the Customs Broker and the forwarder defeat the very purpose of export benefits allowed to the genuine exporters under the Customs Law.

5. Role of M/s B N Thakker & Co., the Customs Broker and Sh. Manoj Kannar (the forwarder):

5.1 Both the above persons were also involved in this syndicate inasmuch as they produce/cause to produce the impugned cargo before the Customs Authorities, which they knew or had reason to believe, was liable to confiscation, inasmuch as they did not check the cargo or any sample of it before producing the same to the Customs; none of them had ever met the exporters personally or had verified the antecedents of the exporters through some independent source but for the DGFT website and that is why they failed to produce the exporters before Customs. The Customs Broker verified the check list from Shri Manoj Kannar, who himself getting the documents through another person, which apparently is non-existing. The shipping bills filed by the Customs Broker on behalf of the exporters read the nature of Contract as CIF which could not be substantiated from other documents viz. the corresponding invoices produced by them along with the cargo. The Customs Broker and the forwarder only negotiated their monetary consideration and were careless about fulfilling the recruitment of law and their statutory duties.

5.2 The act of omissions and commissions committed by the Customs Broker and the forwarder rendered themselves liable to penal action under Section 114 (iii) and 114 AA, of the Customs Act, 1962.

5.3 Accordingly, SCN No. S/15-152/Enq/SIIB/CHM/16-17 dated 07.09.2017 was issued the Exporters & Customs Broker (Co-noticee) under Customs Act, 1962 and same was adjudicated by the Additional Commissioner, Custom House Mundra vide Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019, wherein a penalty of Rs. 20,00,000/- (rupees twenty lakhs only) and Rs. 5,00,000/- (rupees five lakhs only) were imposed on the Custom Broker M/s B N Thakker and Co., Gandhidham - 370 201 under Section 114(iii) of the CA, 1962 and Section 114AA of the Customs Act, 1962 respectively.

6. From the above it appeared that M/s B. N. Thakker & Company failed to obtain authorization, KYC, other documents from the Importer as they were receiving documents from the middleman/forwarder instead of exporter and also failed due diligence to ascertain the correctness of any information related to Export and Exporter. Further, they also failed to advise their client to comply with provisions of the Customs Act, 1962. The CB knowingly and intentionally involved himself in the export of overvalued goods and used false and incorrect material by filing the Shipping Bills to facilitate the impugned exporters, produced false and incorrect declaration before the department and statements. The shipping bills filed by the Custom Broker on behalf of the exporters declared the terms of payments CIF which could not be substantiated with any other documents as well as the declared value which in itself is misleading and mis-stated. The Customs Broker was evidently careless about fulfilling their statutory duties under CBLR, 2013 as a Custom Broker. Therefore, they failed to observe the obligations entrusted upon them under various clauses of Regulation 10 of the CBLR, 2018.

6.1 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 B.N.Thakker & Company failed to supervise the activities of their Manager cum authorised person Shri Sagar Thakker, who indulged in the act of export of cheap quality overvalued goods to facilitate the unscrupulous exporters for self-monetary consideration. Thus, the CB have violated the provision of Regulation 13(12) of CBLR, 2018 (erstwhile Regulation 17(9) of CBLR, 2013).

7. From the above, it appeared that;

7.1 The Custom Broker M/s B.N. Thakker & Company suppressed the material facts from the Customs authorities. They failed to comply with the Regulation **10(a) of CBLR, 2018** {erstwhile regulation 11(a) of CBLR, 2013} in as much as they failed to obtain proper authorization from the exporters (who later were found to be non-existent) by whom they were employed as Customs Broker for clearance of export of subject goods and therefore, they failed to produce original authorization before the authority during the investigation as well as during the adjudication process.

7.2 They failed to comply with the Regulation **10(d) of CBLR, 2018** {erstwhile 11(d) of CBLR, 2013} 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 cheap quality i.e. "MIXED CHINDI" though they are much aware for the cargo as in their written statement they have submitted that after filing of shipping Bills, they received goods through two trucks bearing No. GJ15-YY-9082 and GJ12-AZ-0408 along with manufacturer's invoice issued by M/s. Bhavani Textiles, Bhivandi under which it was mentioned goods description as "MIXED CHINDI". They kept on hold the cargo for further clarification from Shri Manoj Kannar or their exporters instead of informing the facts to the Customs authorities.

7.3 Further, they failed to fulfil the obligation given under Regulation **10(m) of CBLR, 2018** {erstwhile 11(m) of CBLR, 2013} in as much as they did not inform the facts of mis-declared goods, which were overvalued & of cheap quality, to the Customs Officers immediately and the CB has not endorsed himself at Mundra Commissionerate after formation of Mundra Commissionerate (*which is also a violation of Public Notice No. 01/2014 dated 22.12.2014, vide which all those CBs which were working under Kandla Commissionerate are required to give intimation in Form C at Mundra Commissionerate*) and the CB failed to discharge their duties as a Customs Broker with utmost speed and efficiency and without any delay.

7.4 Shri Sagar Thakker, Manager cum authorized person in his statement admitted that, they had received they received whole set of documents *viz.* Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website, he was not in direct touch of the exporters. The Customs Broker was supposed to get verify the check list from the exporter instead of Shri Manoj, because Shri Manoj Kannar was getting the documents from another persons,

who were non-existing. Further, even after getting notice of fraudulent attempt of export by the exporters, the CB has never tried to contact the exporters nor they got done the verification of the existence of the exporter company. From the records it is not forthcoming that after receiving documents from Shri Manoj Kannar, the CB had ever tried to contact the exporters. The CB had not verified the antecedent, identity of the exporters and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, particularly when the exporters had not approached the CB directly for their export work. Online verification of IEC only is not sufficient to verify antecedent because IEC is given by DGFT online without verification of clients. Thus, the CB has contravened the provisions of regulation **10(n) of CBLR,2018** { erstwhile regulation 11(n) of the CBLR, 2013}.

8. 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.

9. 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 {erstwhile CBLR,2013}. I am of the considered opinion that the license of the CB M/s B. N. Thakker & Company 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.

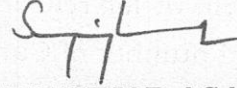
10. Now, therefore, I, the Principal Commissioner of Customs, Kandla, in exercise of powers conferred under Regulation 16(1) of CBLR, 2018 read with regulation 10 of CBLR,2018;

ORDER

- (a) Suspend the Custom Broker License No. CHA/KCH/R/2/1994 (PAN No. AACFB1035E) , valid up to 13.03.2027 issued to M/s B. N. Thakker and Company, Room No. 207, 2nd Floor, Nilesh Park Building, Behind KDBA Gymkhana, Gandhidham, Kutch -370201, with immediate effect, and.
- (b) Pursuant to (a) above, all the Identity cards issued to the said CB, their Directors /Partners/Proprietor, employees, etc., along with CB license shall be surrendered to the CBLR section of this Custom House immediately.

11. 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 **22/04/2019 at 11.00 hrs.** to the said CB - M/s B. N. Thakker and Company, Gandhidham.

12. This Order relies on the Order-in-Original No. MCH/ADC/PK/114/2018-19 dated 26.02.2019 issued by the Additional Commissioner, Custom House Mundra. (Copy of said OIO is available with the Customs Broker.)



(SANJAY KUMAR AGARWAL)
Principal Commissioner

F.No. S/7-57/CHA/2005

Date : 11.04.2019

To
M/s B. N. Thakker and Company,
Room No. 207, 2nd Floor,
Nilesh Park Building,
Behind KDBA Gymkhana,
Gandhidham, Kutch -370201

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, New Custom House, Ballard Estate, **Mumbai** for the information and necessary action.
- ✓ 4. All Section Heads, Custom House, Kandla.
5. The Joint Commissioner of Customs, EDI Section, Custom House, Kandla with a request to block the CB in system.
6. Office copy.
7. Notice Board