



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

A	फाइल संख्या/ File No.	F. No. S/07-25/CHA/2006
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-01-2020-21
C	पारितकर्ता/ Passed by	Shri M. K. Srivastava, COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	11.06.2020
E	जारी करने की दिनांक/Date of issue	11.06.2020
F	कारण बताओ नोटिस, दिनांक/ Show Cause Notice No. & date	-----
G	नोटिसी पार्टी /Noticee/Party	M/s Thakker Clearing Agency Pvt. Ltd (PAN No. AABCT5265C), 1 st Floor, Radha Swami Kripa Building, Plot No. 261, Ward No. 12-B, Gandhidham, Kutch (Gujarat)-370201
H	DIN No.	20200671ML00009M0088

1. यह मूल आदेश संबन्धित व्यक्ति /फर्म को निः शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. इस मूल आदेश से व्यथित व्यक्ति या फर्म सीमा शुल्क अधिनियम, 1962 के अनुभाग 129A(1) एवं सीमा शुल्क अपील नियम, 1982 के नियम संख्या 6(1) के तहत चार प्रतियों के साथ नीचे दिये गए पते पर अपील कर सकता है।
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

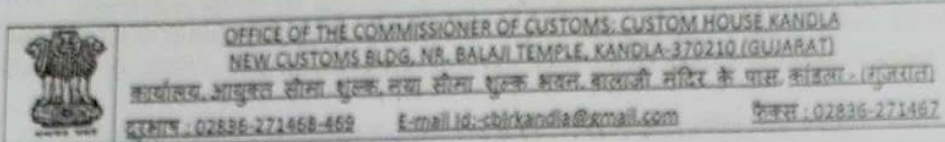
गिरधर नगर ब्रिज के समीप ००४ ३८० -अहमदाबाद, गिरधर नगर

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan, Asarwa,

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

Spd (EDT)
286
16-6-2020

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 शुल्कका %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.



By Speed Post/Hand
F. No. S/07-25/CHA/2006

Date:- 11.06.2020

ORDER IN ORIGINAL

M/s Thakker Clearing Agency Pvt. Ltd (PAN No. AABCT5265C), 1st Floor, Radha Swami Kripa Building, Plot No. 261, Ward No. 12-B, Gandhidham, Kutch (Gujarat)-370201 (hereinafter referred to as 'the CB' for the sake of brevity) were allowed to transact business at Custom House, Kandla on the basis of their Custom Broker License No. 11/906, valid upto 31.12.2026 issued by the Principal Commissioner of Custom (General), NCH, Mumbai- 1.

2. Whereas, an Order-In-Original No. KDL/05/AKM/AC/GR.VI/2020-21 dated 14.05.2020 passed by the Assistant Commissioner, Import Assessment Gr-VI, Customs House, Kandla against M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham & others.

3. M/s PCL Limited, Prime Group Building, 11/5B, Pusha Road, New Delhi (hereinafter referred to as 'the importer' for the sake of brevity) vide letter dated 25.11.2010 applied for registration of their Project Import Contract under Project Import Regulation, 1986 to avail the benefit of concessional rate of duty available to the project imports falling under CTH No. 9801.00 of Customs Tariff Act, 1975 readwith Notification No. 21/2002 at Sr. No. 400 as amended from time to time; and submitted all the requisite documents. The importer had been awarded the contract by M/s. Costal Gujarat Power Limited, Village-Tunda, Tal-Mundra, Dist-Kuchh, Gujarat to supply the equipments and materials for setting up an Ultra Mega Power Project. They have also submitted the LOI No. CGPL/UM10/KJ/285 dated 21.06.2010 issued by the CGPL and recommendation letter No. CGP-13-2010-3799-K issued by the Under Secretary, Energy and Petrochemical Department, 5, Sardar Bhawan, 5th Floor, Sachivalay, Gandhinagar for clearance of Import Project. It is also noticed that the importer had authorized M/s Thakker Clearing Agency Pvt. Ltd (PAN No. AABCT5265C), Gandhidham as 'CHA (now CB)' to submit the said project for registration and clearance.

4. Whereas, subsequent to the registration of the said importer through the CB applied for issuance of Release Advice for import goods arrived at other ports for availing Customs Duty Exemption under Notification No. 021/2002-Cus, Sr. No. 400 from time to time. The importer was issued below-mentioned 05 RA during the period from 17.01.2011 to 18.04.2011:

Sr. No	RA No.	Date	Amount (FOB)			CIF Value (INR)	Port of Import
			USD	EURO	SEK		
1	78	17.01.2011	0	0	37600	2584729	Delhi Airport
2	79	17.01.2011	36500	0	0	1679983	Delhi Airport
3	80	03.02.2011	17500	0	0	816423	Delhi Airport
4	81	14.02.2011	0	4500	0	286593	Delhi Airport
5	94	18.04.2011	25865	0	0	1337273	Delhi Airport
TOTAL			79865	4500	37600	67,05,003	Delhi Airport

5.1. Whereas, as per para 7 of the Project Import Regulation, 1986, the Importer was required to submit the following documents within 3 month from the clearance of last shipment for finalization of the project;

- (i) Reconciliation Statement under Appendix-C,
- (ii) Bank attested/ Custom attested Invoice
- (iii) Original Triplicate Bill of Entry
- (iv) Bank Remittance Certificate,
- (v) Original Challan Copy,
- (vi) Installation Certificate from the Chartered Engineer,
- (vii) Plant site verification from the jurisdictional Central Excise Authority; and

Apart from above, the importer was also required to produce duplicate copy of finally assessed Bill of Entry, from the port of import. Further, as per para 5 of Circular No. 22/2011-Cus dated 04.05.2011- Instruction regarding Project Import Regulation, 1986 stated as under;

"In respect of goods cleared under Release Advice (RA), at port other than the port where the contract for project imports is registered, it has been reported by the field formations that provisionally Bills of Entry are not finalized expeditiously causing delay in finalization of Project Imports. It has, therefore, been decided that importer and his Custom House Agent should ensure that the provisionally assessed Bills of Entry for the imported goods at the ports other than the port of registration of project imports are finally assessed and audited at the respective ports, and should be submitted alongwith the documents submitted for finalization of Project Import."

5.2. Whereas, it appears that the importer had imported almost 95% of the value/quantity of goods as registered under the said Project Import Contract and it is also appeared that the importer is not interested to import the goods of remaining value/quantity.

6. It is the obligation of the importer as well the CB to ensure that the provisionally assessed Bills of Entry for the imported goods at the ports other than the port of registration of project import are finally assessed and audited at the respective ports, and should submitted alongwith the documents submitted for finalization of Project Imports. The importer and the CB failed to produce the documents as mentioned above.

7. Whereas, It is also noticed that the importer and the CB failed to produce the 'Installation Certificate' even after lapse of more than five year, in term of the provisions of Regulation 7 of PIR, 1986 read with Board's Instructions issued vide Circular No. 22/2011-Customs dated 04.05.2011 for finalization of project imports, the importer is required to submit a certificate from a registered Chartered Engineer certifying the installation of imported items of machinery alongwith other documents.

8. Whereas, the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham were authorized by the importer to act as their CB to submit the documents for registration and clearance of goods at concessional rate of duty. As per PIR, 1986 read with Circular No. 22/2011-Cus dated 04.04.2011, it is the obligation/ responsibility of the CB to ensure that the provisionally assessed Bills of Entry for the imported goods at the ports other than the port of registration of project imports are finally assessed and audited at the respective ports, and should be submitted alongwith the documents submitted for finalization of Project Imports. However, the CB, M/s. Thakker Clearing Agency Pvt. Ltd neither produce any correspondence made with the importer nor informed the department regarding receipt and installation of the imported goods under concessional rate of duty. For the acts of omission and commission the CB liable for penal action under clause (ii) of sub-section (2) of Section 158 of the Customs Act, 1962 for non-compliance of Regulation 7 of Project Import Regulation, 1986.

9. Therefore, a Show Cause Notice F. No. S/42-34/PCI-Project/Gr.VI/2010 dated 22.12.2016 and sub-sequent Corrigendum 23.02.2017 to the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham & others, wherein the CB have been asked to show cause as to why;

"Penalty should not be imposed under clause (ii) of sub-section (2) of Section 158 of Customs Act, 1962, for non-compliance of Regulation 7 of Project Import Regulation, 1986 read with para no. 5 of the Circular No. 22/2011 dated 04.05.2011-instructions."

10.1. Whereas, the SCN dated 22.12.2016 was adjudicated vide OIO No. KDL/05/AKM/AC/Gr.VI/2020-21 dated 14.05.20120 passed by the Assistant Commissioner, Gr.VI, C.H. Kandla. During the course of adjudication, the adjudicating authority noticed that no any defense submission/reply was submitted by the CB before the adjudicating authority. Further, the notice was given enough opportunity to represent their plea by way of personal hearing, which

was fixed on 18.05.2018, 10.01.2019, 22.05.2019, 12.06.2019, 06.08.2019, 10.02.2020 and 16.03.2020, however, the CB failed to attend the personal hearing.

10.2. The adjudicating authority find that the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham had failed to comply with the provision of Regulation 7 of the Project Import Regulation, 1986 readwith para 5 of the Circular No. 22/2011-Cus dated 04.05.2011 and the CB is liable to penalize action under clause (ii) of Sub-section (2) of Section 158 of the Customs Act, 1962, for non-compliance of provision of regulations 7 of the Project Import Regulation, 1986 readwith para 5 of the Circular No. 22/2011-Cus dated 04.05.2011.

10.3. Vide the OIO, the Adjudicating Authority imposed penalty of Rs. 10,000/- on the CB under clause (ii) of Sub-section (2) of Section 158 of the Customs Act, 1962, for non-compliance of provision of regulations 7 of the Project Import Regulation, 1986 readwith para 5 of the Circular No. 22/2011-Cus dated 04.05.2011.

11. Whereas, the Custom Broker is supposed to comply the obligations as stated in Regulation 10 of the CBLR, 2018, mentioned as under:

Obligations of Customs Broker – A Customs Broker shall –

- (a) Obtain an authorisation from each of the companies,
- (b) Transact business in the Customs Station either personally or through
- (c) Not represent a client in any matter
- (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 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;
- (e) Exercise due diligence to ascertain the correctness of any information
- (f) Not withhold information contained in any order,
- (g) Promptly pay over to the Government, when due, sums
- (h) Not procure or attempt to procure directly or indirectly,
- (i) Not attempt to influence the conduct of any official
- (j) Not refuse access to, conceal, remove or destroy the
- (k) Maintain up to date records such as bill of entry, shipping bill,
- (l) Immediately report the loss of license granted to him
- (m) Discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;
- (n) Verify correctness of Importer Exporter Code (IEC) number,
- (o) Inform any change of postal address,
- (p) Maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and
- (q) Co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

12.1. Thus, it is noticed that the CB has failed to advice this client i.e. M/s. PCI Limited, New Delhi (the importer) to submit the required documents to the Department. The above commission and omission of Acts on the part of the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham - is a violation of Regulation 10(d) of Custom Broker Licensing Regulation, 2018 (earlier Regulation 11 (d) of Custom Broker Licensing Regulation, 2013), which puts an obligation on the Custom Broker to;

"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;"

12.2. Further, it is noticed that the CB has failed to perform his duty as Custom Broker as he did not produce the correspondence made with the importer and the CB also did not informed

the department regarding receipt and installation of the imported goods under concessional rate of duty. The above commission and omission of Acts on the part of the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham - is a violation of Regulation 10(m) of Custom Broker Licensing Regulation, 2018 (earlier Regulation 11 (m) of Custom Broker Licensing Regulation, 2013), which puts an obligation on the Custom Broker to;

"discharge his duties as custom broker with utmost speed and efficiency and without any delay."

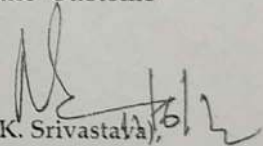
12.3. Further, it is noticed that the CB has never present before the adjudicating authority and never co-operate the adjudicating process even though enough opportunity was given to them. Thus, the CB failed to co-operated the Customs Authorities in the adjudication process against them and their client. The said commission and omission of Acts on the part of the CB i.e. M/s. Thakker Clearing Agency Pvt. Ltd, Gandhidham - is a violation of Regulation 10(q) of Custom Broker Licensing Regulation, 2018, which puts an obligation on the Custom Broker to;

"co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

13. In view of the above, I am of the opinion that the continuation of business operations of the CB in the jurisdiction of Customs House Kandla, is to be prohibited, as they failed to follow the conditions of Regulation 10(d), 10 (m) and 10(q) of the Custom Broker Licensing Regulation, 2018 (earlier respective Regulations of Custom Broker Licensing Regulation, 2013).

14. Now, therefore, in exercise of the powers vested in me under the provisions of Regulation 15 of Customs Broker Licensing Regulation, 2018 read with Regulation 14 of the CBLR, 2018, I, the undersigned, hereby prohibit the CB i.e. M/s Thakker Clearing Agency Pvt. Ltd (PAN No. AABCT5265C), 1st Floor, Radha Swami Kripa Building, Plot No. 261, Ward No. 12-B, Gandhidham, Kutch (Gujarat)-370201, from transacting their business at all the Sections of Custom House, Kandla and other ports falling under the jurisdiction of this Commissionerate, for 30 days, with immediate effect.

15. This Order relies on the Order-in-Original No. KDL/05/AKM/AC/Gr.VI/2020-20 dated 14.05.2020 issued by the Assistant Commissioner, Import Assessment Group-VI, Custom House Kandla. (Copy of said OIO is available with the Customs Broker.)


(M. K. Srivastava),
Commissioner

To,
M/s Thakker Clearing Agency Pvt. Ltd,
1st Floor, Radha Swami Kripa Building,
Plot No. 261, Ward No. 12-B,
Gandhidham, Kutch (Gujarat)-370201.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad.
2. The Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I, for information and necessary action. (by Speed Post)
3. The EDI Section, Custom House, Kandla.
4. Notice Board, Custom House, Kandla.

