

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85337 OF 2021

[Arising out of Order-in-Original CAO No: 84/CAC/PCC(G)/PS/CBS(Adj.)
dated 26th February 2021 passed by the Principal Commissioner of
Customs(General), Mumbai.]

P Cawasji & Co
Ida Mansion, 18 Vaju Kotak Marg
Mumbai 400001

...Appellant

versus

Principal Commissioner of Customs (General)
New Custom House, Ballard Estate, Mumbai - 400001

...Respondent

APPEARANCE:

Shri Arun Mehta, Advocate for the appellant

Shri KK Srivastava, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86188 /2021

DATE OF HEARING:	06/04/2021
DATE OF DECISION:	06/04/2021

PER: C J MATHEW

M/s P Cawasji & Co, holder of customs broker licence no.
11/319 issued from Custom House, Mumbai, is before us seeking

restoration of the licence that was revoked, along with the security deposit that was forfeited, under authority of regulation no. 14 and for setting aside the penalty of ₹ 50,000 imposed under authority of regulation no. 18 of Customs Brokers Licencing Regulations, 2018 by Principal Commissioner of Customs (General), Custom House Mumbai in order no. 84/CAC/PCC(G)/PS/CBS(Adj) dated 26th February 2021. The proceedings culminating in the impugned order had its genesis in the alleged misuse of authorizations (permitting clearance without payment of duty under ‘duty free replenishment certificate (DFRC)’ and ‘duty entitlement pass book (DEPB)’ schemes in the Foreign Trade Policy) on removal of imported goods, against 111 bills of entry between 2003-04 and 2005-06, by M/s Akshay Exports from the ‘private bonded warehouse’ in which these had been deposited. Considering the pleas made during the hearing, we do not propose to go into the details of the proceedings, involving the said importer and others including, as facilitating customs broker, the appellant before us, under Customs Act, 1962; more so, as the adjudication therein has been separately dealt with by the Tribunal *vide* order no. A/87161-87164/2019 dated 30th September 2019 upon challenge mounted against order-in-original no. Belapur/02-03/Taloja/R-V/SLM/Commr/2012-13/Bel/937 dated 11th June 2017 of Commissioner of Central Excise, Belapur. It suffices to merely take note that the appeal of the customs broker against imposition of

penalty of ₹ 10,00,000 and of ₹ 25,00,000 by the authority adjudicating two notices dated 13th March 2009 and 11th March 2010 was allowed by the Tribunal in entirety.

2. Learned Counsel for appellant submits that, in the meanwhile, the licencing authority, taking note of the proceedings under Customs Act, 1962 commenced by the two notices *supra*, initiated the process for revocation as laid down in regulation no. 20 of Customs Brokers Licencing Regulations, 2013 *vide* notice dated 2nd January 2020 in which the appointment of inquiry officer, as mandated in regulation 22 of Customs House Agents Licencing Regulations, 2004, was also intimated. It was informed by him that the charges enumerated therein involved breach of regulation no. 11(d), 11(e), 11(f), 11(m) and 11(n) of Customs Brokers Licencing Regulations, 2013 and that, despite the designated inquiry officer rendering a finding that regulation no. 11(d) and 11(m) alone had been breached, the licencing authority proceeded, after issue of notice of disagreement to the appellant herein, with the detriments on the ground of all the charges having been proved.

3. We do not wish to dilate overmuch on the invoking of several provisions from across different Regulations of 2004, 2013 and 2018 in the notice as well as in the impugned order; each of these having been superceded by the successor instrument, proceedings initiated in

2020 should have been with reference to the provisions of last of the Regulations. Though the hotch potch of references is not fatal to the proceedings, it certainly does not commend itself as reflection of responsible administering of as important an issue as that of extinguishment of the professional existence of a 'custom broker licence' which is deserving of more meticulous scrutiny on the part of the licencing authority. It would also not be conducive to proceedings before the Tribunal as we have been compelled to go through each of these Regulations to assure ourselves that authority had been legally invoked. A cluttered notice and order reflects less than proper application of mind. Considering the difficulty before us, we shall, for the sake of regularity in this order, be drawing upon the relevant provisions of Customs Broker Licencing Regulations, 2018.

4. According to Learned Counsel, recourse to procedure in regulation no. 17 of Customs Broker Licencing Regulations, 2018 mandates receipt of offence report by the licencing authority. He contends, while conceding that the Hon'ble High Court of Bombay has held adherence to the timelines in the several stages to be directory, that this submission has nothing to do with non-adherence to timelines but that the metaphorical 'starter pistol' of 'offence report' is the essential pre-requisite for commencement of proceedings. He points out that the notice under regulation no. 17 of Customs Broker Licencing Regulations, 2018 having been issued in

January 2020, with reference to the show cause notices of 2009 and 2010 pertaining to violations of Customs Act, 1962 in clearances effected between 2003-04 and 2005-06 that were adjudicated by common order dated 11th June 2017, despite those very developments having been erased, in relation to the appellant herein, out of existence with effect from the order of the Tribunal dated 30th September 2019. He informed that this plea made before the inquiry authority, as well as licencing authority, had been brushed aside as attempt at obstruction of process by imputing non-adherence to timelines that was attributable to difficulty in securing documents. Reliance was placed by Learned Counsel on the decision of the Hon'ble High Court of Delhi in *Necko Freight Forwarders Ltd v. Commissioner of Customs (General)* [2018 (360) ELT 879 (Del)] in support of this submission.

5. He further contends that the disagreement noted by the licencing authority on the dropping of three charges of breach of obligation was with intent to draw attention away from the responsibility of the customs officials concerned which was frowned upon by the Hon'ble High Court of Calcutta in *Commissioner of Customs (Preventive), West Bengal v. Over Land Agency* [2006 (204) ELT 554 (Cal)]. According to him, the detriment visited on the appellant is disproportionate even for the two charges that were held as proved in the inquiry report.

6. Learned Authorized Representative, while reiterating the findings of the licencing authority in the impugned order, submits that the setting aside of the penalties proposed in the notices, and imposed in the adjudication under Customs Act, 1962, that were the basis for commencement of proceedings may not have been brought to the attention of the licencing authority in time.

7. It may not be untrue that the licencing authority was unaware of the proceedings before the Tribunal against the adjudication order that was the culmination of the process initiated in the show cause notices referred to for proposing revocation of customs broker licence. However, it was incumbent on such authority to ascertain the status before initiating proceedings on the assumption that the penalties imposed in adjudication had attained finality. Furthermore, the inquiry report, and the revocation order, failed to even acknowledge the claim of the customs broker that the proceedings could not have been initiated in the absence of 'offence report' envisaged in Customs Broker Licencing Regulations, 2018.

8. On perusal of the notice, and the impugned order, it is seen that the show cause notices of 2009 and 2010, being the earliest documentation of any allegation that the appellant may have been involved in misuse of authorizations, was the proximate cause of action for recourse to Customs Brokers Licencing Regulations, 2018.

In the absence of any other document that claims to be the ‘offence report’, these notices must be taken to be the said reports for triggering proceedings thereafter. Leaving aside the issue of the elapse of time between the said show cause notices under Customs Act, 1962 and the notice under regulation no. 17 of Customs Brokers Licencing Regulations, 2018, the erasure of the proposals against the customs broker contained in those very show cause notices as early as September 2019 had wiped the ‘offence reports’ out of existence well before the notice for revocation was issued. In other words, the proceedings were commenced without the metaphorical ‘starter pistol’ and thus renders the subsequent inquiry and impugned order to be stillborn.

9. In *re Necko Freight Forwarders Ltd*, the nature of ‘offence report’ was considered at length and, though in the context of suspension of licence and its consequences, its relevance not only as the marker for prescribed deadlines in the process but also for the commencement of proceedings has been highlighted thus

‘15. The expression ‘offence report’ has not been defined. However, it is apparent that the same must mean a report indicating that an offence has been committed by the Customs Broker. This is also how the said term has been understood by the authorities. The expression ‘offence report’ was also used in Regulation 22(1) of CHALR, 2004. In terms of the said sub-regulation, the Commissioner of Customs was required to issue a notice within 90 days of the receipt of an

offence report, indicating the grounds on which the License of a Customs House Agent was proposed to be revoked/suspended. The Central Board of Excise and Customs had issued a circular (Circular No. 9/2010-Cus., dated 8-4-2010) in regard to certain issues that had arisen with regard to the implementation of CHALR, 2004. Paragraph 7.2 of the said circular is relevant and is quoted below :-

“7.2 In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under Regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a ‘post-decisional hearing’ should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him.”

16. A plain reading of the aforesaid passage indicates that the expression ‘offence report’ as used in Regulation 20(2) of CHALR, 2004 was understood as a report regarding detection of an offence.’

Even if the deadlines for each stage leading to revocation of licence are directory and, as held by the Hon’ble High Court of Bombay, with each non-adherence to be adjudged on its facts as having vitiated the

proceedings, the deadlines, measured with reference to ‘offence report’, are not deprived of sanctity. Furthermore, from its specific inclusion, without any attendant qualification, in regulation no. 17 of Customs Broker Licencing Regulations, 2018, it must be acknowledged to be the foundation for initiation of proceedings by the licencing authority. The erasure of the show cause notices, deemed as the ‘offence report’, renders the proceedings *non est* and in excess of the powers vested in the licencing authority.

10. We may do worse than dwelling awhile on the significance of the ‘offence report’ in the procedure for revocation of licences. Customs brokers are intermediaries established under, and recognized by, section 146 of Customs Act, 1962. Its criticality is manifest in the enactment of this special provision within the taxing statute for enabling the Central Board of Indirect Taxes & Customs to structure the framework for the existence and control of such brokers through Regulations. The citing of the approval accorded by the Hon’ble Supreme Court in *Commissioner of Customs v. KM Ganatra & Co [(2016) 4 SCC 697]* to the observation of the Tribunal in *Noble Agency v. Commissioner of Customs [2012 (142) ELT 84 (Tri)]* thus

“15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in *Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) ELT 84 (Tri. - Mumbai)]* wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-

“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....”

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.’

in the impugned order serves not only as *imprimatur* for admonition of customs brokers but also to enunciate restrictions to the intervention powers of the licencing authority. That follows from the means to livelihood afforded to the customs broker as well as the standing accorded to the customs broker within the commercial world upon issue of licence; there is a concomitant responsibility to deprive a customs broker of both only after proper application of mind demonstrated by conformity with procedure enshrined in the Regulations. If the ‘offence report’ is but a trivial technicality, it would be permissible for the licencing authority, who, in the normal course of discharge of functions, does not oversee the functioning of customs brokers directly, to tie customs brokers down in penal proceedings even in the absence of a ‘written report’ that carries accountability for reporting of an offence. It could, in the absence of

oversight, lead to whimsical action that fosters anarchy within the fraternity of customs brokers. The emplacement of ‘offence report’ within the scheme of revocation is not intended to be stultified under any circumstance and permitting of any dilution can only be at the cost of perverting the legislative intent of section 146 of Customs Act, 1962. Strict adherence to legislated empowerment cannot but be insisted upon even before merit of the detriment can be interfered with.

11. In the light of our above discussion, which takes note of the manifest lack of ‘offence report’ when notice under regulation no. 17 of Customs Broker Licencing Regulations, 2018 was issued, we are constrained to negate the very proceedings that followed along with the consequences thereon in the form of revocation of licence, forfeiture of security deposit and imposition of penalty. Appeal is allowed by setting aside the impugned order.

(Operative Part of the Order Pronounced in the open court on 6th April 2021)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)