CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87159 OF 2013

[Arising out of Order-in-Original No: 26/CAO/CC (G)/PKA dated 19th February 2013 passed by the Commissioner of Customs (General), New Custom House, Mumbai.]

R R Joshi (Shipping & Forwarding) Pvt Ltd
3rd Floor, Freight Forwarders Premises Co-Op Soc Ltd,
Plot No. 5, Sector 1, Dronagiri, Dist: Raigad,
Maharashtra - 400707 … ***Appellant***

versus

Commissioner of Customs (General)
New Custom House, Ballard Estate, Mumbai - 400001. ***…Respondent***

APPEARANCE:

Ms Kiran Doiphode, Advocate for the appellant

Shri Ramesh Kumar, Assistant 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 / 87167 /2021

DATE OF HEARING:	21/09/2021
DATE OF DECISION:	17/11/2021

PER: C J MATHEW

Arguing the case of the appellant, M/s RR Joshi (holder of CHA license no. 11/486), in this challenge to order no. 26/CAO/CC (G)/PKA dated 19th February 2013 of Commissioner of Customs

(General), New Custom House, Mumbai which forfeited the security deposit, while permitting the continued operation of the license with fresh deposit as applicable, under regulation no. 20 of Customs House Agents Licensing Regulations, 1984, it is the contention of Learned Counsel that the proceedings were conducted behind the back of the licensee, that there are no findings recorded by the inquiry authority, that the penalty is disproportionate to the gravity of offence, if any, and that any breach on the part of the licensee could, at best, be considered to be procedural.

2. Learned Authorised Representative submits that the licensing authority has not only rendered findings at length but has also taken into account the nature of the lapse to impose the least of the penalties prescribed in Customs House Agents Licensing Regulations, 1984.

3. In the light of the submissions made by both sides, a brief narrative of the circumstances leading to the impugned order may not be out of place. The appellant, licensed by the competent authority at Mumbai, was permitted to operate at Inland Container Depot (ICD), Ballabgarh and, upon acting for M/s Jotindra Steel and Tubes Pvt Ltd in the export of ‘galvanised tubes and pipes’, was proceeded against by issue of show cause notice dated 28th July 2011 by Additional Commissioner of Customs, Faridabad contemplating the imposition of penalty under section 117 of Customs Act, 1962 and, in the interim, prohibited from operating within the jurisdiction of Commissioner of

Customs, Delhi by order dated 4th November 2011, for having brought the five consignments to place of export before filing of the corresponding shipping bills between 26th and 28th January 2011; it was alleged that these consignments were found to vary in weight with the declaration in the documents issued at the place of removal and that the containers had not been sealed.

4. Notice of proceedings under regulation no. 22 of Customs House Agents Licensing Regulations, 2004 was issued on 25th January 2012 and Inquiry Authority appointed for the purpose. In the meanwhile, the show cause notice referred *supra* was adjudicated on 21st November 2011 dropping the proceedings with cautionary advice for the future and Commissioner of Customs, Delhi, *vide* order dated 29th November 2011, revoked the order of prohibition. Notwithstanding these facts being brought to the notice of the Inquiry Authority, the proceedings on the four charges of breach of regulation no. 13 (d), (e), (f) and (n) of Customs House Agents Licensing Regulations, 2004 was continued with. The Presenting Officer, in his report dated 7th July 2012 and on the basis of purported admission by the licensee, proposed that proceedings be concluded with all the charges held as proved. From the records, it is seen that communication, dated 5th October 2012 and 23rd October 2012, enclosing the said the report of the Presenting Officer and addressed to the customs house agent were reportedly returned undelivered. Thereafter, on submission of report of Inquiry Authority dated 11th

December 2012, the competent authority, taking note of all the charges having been held as proved, imposed the forfeiture now impugned before us.

5. The procedure prescribed under regulation no. 22 of Customs House Agents Licensing Regulations, 2004 envisages a specific role for the Inquiry Authority in the process elaborated therein. This, doubtlessly, presumes the participation of the customs house agent. It is on record that these procedures were not followed and the conclusion had been arrived at on presumed admission as reported by the Presenting Officer. The ostensible reason for such summary conclusion was the ‘non-availability’ of the licensee at the licensed address. However, it cannot but escape notice that this correspondence had been initiated by one Dr PK Raut, Deputy Director, DGCEI, Mumbai; undoubtedly, it was one Shri PK Raut, Assistant Commissioner of Customs, Air Cargo Complex, Mumbai who had been nominated by the licensing authority but there is nothing on record to indicate either that transition in office had occurred or that the licensing authority did intend to continue the proceedings with the same inquiry authority even after the change of office. It is indeed moot if the designated official, intended by regulation no. 22 of Customs House Agents Licensing Regulations, 2004, can be any other than a Deputy Commissioner of Customs or Assistant Commissioner of Customs. Without examining the legality of continuance of proceedings after the nominated official ceased to be Deputy/Assistant

Commissioner of Customs, the absence of any record evincing that licensee had been placed on notice about acquiescence of the Commissioner of Customs with the re-designated official carrying out the entrusted task may well have been the reason for non-acceptance of communication emanating from an address that could, conceivably, alarm the appellant herein. Nonetheless, the inference drawn by the Presenting Officer, which appeared to have substantially influenced the Inquiry Authority, was not made available to the customs house agent for confirmation. The proceedings are, consequently, tainted as are the conclusions and the consequences in the hands of the licensing authority.

6. We now have to consider whether any purpose would be served by fresh proceedings. It is on record that the alleged breach of obligations were grounded in the proceedings initiated under Customs Act, 1962 at Faridabad and the closure thereof erases the foundation on which the customs house agent was issued with the chargesheet. Furthermore, a customs house agent is licensed under the authority of section 146 of Customs Act, 1962 in terms of which the agency function should commence with declarations filed under section 46 or section 50, as the case may be, of Customs Act, 1962. Any other responsibility resting upon the person of the customs house agent is a transaction that is not acknowledged under Customs Act, 1962. The absence of seals and the discrepancy in weight pertained to containers delivered at the designated place of export before the shipping bill

was filed; these occurred prior to the statutory responsibility thrust upon the customs house agent could be said to have commenced. Furthermore, the licensing authority failed in ascertaining the extent of responsibility as it is evident that the custodian had been derelict in accepting such consignments or that such deliveries were conventionally accepted in the said jurisdiction.

7. The incident which gave rise to the proceedings occurred in January 2011 and the proceedings took one full year thereafter to commence. The role of the customs house agent in the alleged breach of procedure was also found to be condonable in adjudication proceeding. In the circumstances, we do not believe that public interest would serve for the entire proceedings, involving heavy investment in man-hours, to be resumed for the limited purpose of imposition of penalty that, in any case, could not exceed forfeiture of the security deposit.

8. In view of the above, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 17/11/2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*