

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86819 OF 2022

[Arising out of Order-in-Original No: 14/CAC/PCC(G)/SJ/CBS-Adj dated 23rd May 2022 passed by the Principal Commissioner of Customs (General), Mumbai.]

Mukadam Freight Systems Pvt Ltd

Room No. 3, Patel Niwas,
Toni Compound Church Pakhadi Road,
Sahar, Andheri (E), Mumbai - 400099

...Appellant

versus

Principal Commissioner of Customs (General)

New Custom House, Ballard Estate, Mumbai - 400001

...Respondent

APPEARANCE:

Shri N S Patel, Advocate for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR S K MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINALORDER NO: A/ 85906/2023

DATE OF HEARING:	01/12/2022
DATE OF DECISION:	31/05/2023

PER: C J MATHEW

This appeal of M/s Mukadam Freight Systems Pvt Ltd
challenges the revocation of customs broker licence no. 11/246 in

order¹ of Principal Commissioner of Customs (General), Mumbai in proceedings under Customs Broker Licencing Regulations (CBLR), 2018 which, besides, has forfeited the security deposit and imposed a further penalty of ₹ 50,000/- under regulation 18 of Customs Brokers Licensing Regulations, 2018.

2. Proceedings were initiated in accordance with regulation 17 of Customs Broker Licencing Regulation, 2018 consequent upon receipt of report that examination of consignments covered by shipping bills no. 9107154/24.11.2018, no. 9104269/24.11.2018 and no. 9104315/24.11.2018 filed by them, on behalf of M/s Tristar Trading, for export of 2990 kgs of 'parts and accessories of vehicles' showed the goods to be 3328 kgs of 'parts of 'two wheelers' with the declared heading no. 8714 2090 of ITC (HS) Classification, intended for 'carriages for disabled persons', corresponding neither to the declared, not actual, description of goods that was also, as per report of the chartered engineer, overvalued. The facts are not really material to proceedings under Customs Broker Licencing Regulations, 2018 though alleged discrepancies are; show cause notice dated 1st January 2021 had been issued to the appellant proposing revocation of licence, along with forfeiture of security deposit, and imposition of penalty, envisaged by regulation 14 and regulation 18 respectively of Customs Brokers Licensing Regulations, 2018 for breach of regulation 10(d),

¹[order no. 14/CAC/PCC(G)/SJ/CBS-Adj dated 23rd May 2022]

10(e), 10(m) and 10(n) therein. The nominated enquiry authority, *vide* report dated 31st January 2022, held all the charges as proved following which the licencing authority invoked the full extent of powers vested in him.

3. The notice charged the appellant for breach of requirement to

‘(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 which he imparts to a client with reference to any work related to clearance of cargo or baggage;

xxxxx

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify the correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and the functioning of the client at the declared address of the client by using reliable, independent, authentic documents, data or information;

xxxx’

as prescribed in regulation 10 of Customs Brokers Licensing

Regulations, 2018. The only benefit accruing to the exporter, as seen from the records, is refund of 'goods and services tax (GST)' discharged by them on procurement of the export goods and which, subject to evincing due payment to the exchequer, is not a privilege to be conferred on them but the bounden obligation of the State as incorporated in the applicable statute.

4. It is needless to state that, considering the proposal for deprivation of business and livelihood of the broker and its employees, such proceedings are not to be entered into lightly but only upon enumeration of the specific facts that evince departure from the norm intended in each and every one of the mandates of proper conduct elaborated upon in regulation 10 of Customs Broker Licencing Regulations, 2018 and also in strict adherence to the prescribed timelines. Any disregard of the former or laxity in the latter has potential for fastening charges of misuse of authority and miscarriage of justice on the licencing Commissioner. We also take note that, though correctness of declarations is a consummation devoutly to be wished for, entries under section 46 and 50 of Customs Act, 1962 are adjuncts to the machinery provision of section 17 of Customs Act, 1962 and, unless demonstrated lack of meticulousness has had the consequence, or potential, of derailing assessment or warranted privilege, proposal for revoking of licence is hasty, ill-considered and disproportionate. Likewise, application of mind should

be evinced by invoking the appropriate mandate of conduct as having been breached in a given factual matrix. We are constrained to embark upon this narration as, all too often, we are confronted with a buffet of facts and allegations that, taken together, may suffice to interdict a particular consignment and to penalise under section 112 or section 114 of Customs Act, 1962 in an episodic proceeding without impinging upon continuation of cross-border transactions often losing sight of the finality in proceedings to terminate livelihood warranting conformity with the intent of the Regulations.

5. The competent authority, viz., Commissioner of Customs (General), Mumbai has found that the discrepancies in the shipping bills suffice to conclude that the appellant had failed to advise his client to comply with all the requirements of law. It is also held, from the statement of the Director of the appellant-company, that it would be correct to conclude that the customs broker had not interacted with the exporter to which could be attributed the failure to incorporate classification in the supply invoices as declaration in the shipping bills. Insofar as speed and efficiency expected of a customs broker is concerned, it was held that the failure to verify address and to peruse the documents pertaining to procurement of export goods was a breach of the requirements mandated on customs broker. Finally, it was also held that the admission by the customs broker of not having verified the address of, and instead placing reliance on documents

provided by, the exporter suffices to establish the correctness of the last charge.

6. Learned Counsel for the appellant submits that the Hon'ble High Court of Bombay, in *Commissioner of Customs (General), Mumbai v. Alankar Shipping & Clearing P Ltd* [2019 (367) ELT 553 (Bom.)], had held that procedural breach should not have the outcome of depriving a customs broker of his licence. It was also contended that the impugned order had been passed well after the time-limit prescribed in Customs Brokers Licensing Regulations, 2018, which stipulates elapse of time at each stage as well as for the whole, by issue of show cause notice only on 1st January 2021 in relation to acts of omission and commission alleged to have occurred on 26th February 2018 and that conclusion of enquiry was, unwarrantedly, belated. Furthermore, it was pointed out by him that the consignment in question had been permitted to be provisionally assessed for export indicating that the discrepancies are procedural and not meriting the harsh penalty imposed on them. It was further submitted that the Tribunal, in *Manjunatha Cargo Pvt Ltd v. Commissioner of Customs, Bangalore* [2021 (375) ELT 245 (Tri.-Bang.)], had held that physical inspection of the premises of a client is not mandated by the Regulations and that there was no justifiable reason to impose detriments upon customs brokers adhering to 'know your customer (KYC)' norms. It was pointed out that the Tribunal, in *GSP Shipping*

& Logistics Agency v. Commissioner of Customs (Airport & Administration), Kolkata [2021 (376) ELT 527 (Tri.-Kolkata)], had held that ascertaining mis-declaration, if any, of quantity and quality of impugned goods does not fall within the obligation expected of a customs broker.

7. We have heard Learned Authorised Representative who submitted that the enquiry report has held the irregularities committed by the customs broker as proved and that the detriment of revocation, along with forfeiture of deposit and imposition of penalty, is not disproportionate considering the breach of conduct.

8. The facts ascertained during the examination, or unearthed in the subsequent investigations, and emplaced, at times, in the notice commonly to evince breach of several of the enumerations of proper conduct in regulation 10 of Customs Brokers Licensing Regulations, 2018 are incorrect declaration of weight, value and description, resort to common heading of ITC (HS) classification and lack of conformity of heading incorporated in shipping bills with that in invoices of the supplier of the goods. In addition, reliance has been placed on the admission of the Director of the appellant-company that they did not interact directly with the client. It would not be out of place to take note that the refund of tax, consequent upon completion of export, is limited to tax discharged on procurement and there is no allegation

that they would, in consequence of the declarations, be entitled to a whit more than that; nor is there any controverting of the claim of the exporter to be entitled to the refund.

9. The logical and sequential arrangement of the obligations devolving on customs brokers does not admit of any scope to cite the same fact as act of omission or commission manifesting as breach thereto of two, or more, of the prescriptions of proper conduct. Of the four charges brought against the appellant, the first deals with responsibility to advice conformity with applicable law and consequence of discard of advice; the second with only ascertained information to be furnished to a client.

10. The third is all about servicing of the client and would be invoked only upon grievance of a client that performance is bereft of speed and efficiency. There is no record of such complaint and there is no evidence to indicate want of speed or efficiency – which is about promptness in execution and avoidance of wasteful tasks – on the part of the customs broker in any aspect of engagement in the export transaction. It would appear that the charge of breach of regulation 10(m) of Customs Broker Licencing Regulations, 2018 has emanated from lack of application of mind to the norm intended by the said obligation. The fourth charge deals with verification of existence of client; here again, any deviation from the norm may be established

only by evincing non-existence of the entity or existence at some other location and unconnected with the activities for which the broker had been engaged. There is no allegation that the client did not have 'importer exporter code (IEC)' number and 'goods and services tax identification number (GSTIN)' or that the declared address is incorrect. The goods are available and exports were permitted, *albeit* provisionally. The facts do not bear out the charge of breach of regulation 10(n) of Customs Broker Licencing Regulations, 2018 notwithstanding the statement relied upon which, in the light of the decision of the Tribunal in *re Manjunatha Cargo Pvt Ltd*, is not an admission of any breach.

11. Undervaluation is a determination on the part of the customs authorities and, in the absence of finding that the purported transaction price is supplemented by additional consideration or is partially reimbursed to exporter, any revision is merely exercise of empowerment to restrict benefit or recover duty; recourse to some rule of valuation is part of procedure of assessment which the licencing authority can hardly fasten on customs broker as normative conduct. Even the difference in weight, at about 10% of that declared, is so marginal, and with no discrepancy in declaration of quantity, as to have little impact on diligent completion of assessment. That goods appear to be not 'parts of motor vehicles' but of 'two wheelers' and that declared classification does not conform to either is not relevant

to the factum of exports or of any benefit derived therefrom and to invoke detriment for any distortion of statistics therefrom is to burden customs brokers with custodianship of statistical integrity; that surely is not the objective of the Regulations and it is absurd to believe that a system which has invested heavily in data warehousing and analytics would be anachronistic enough to found its statistical veracity on such peripheral source. We fail to perceive any justification for concluding from these discrepancies that unascertained information has been provided to a client. The lack of any discussion on the norms actuated for compliance with the obligation in regulation 10(e) of Customs Broker Licencing Regulations, 2018 and of flouting of the norms flowing from the few available facts puts paid to the finding that this obligation has been breached.

12. There are, apparently, discrepancies in the declaration contained in the shipping bills. That the declarations should match the facts relating to exports is, no doubt, ideal. However, tendency to be casual about particulars that are 'not material' is a human failing. There is no evidence that the enumerated discrepancy has impacted the substantiveness of either the export or of the quantum of refund eligible. Not does it essay that the discrepancies came about because compliance with the law had not been insisted upon by the customs broker or that the discrepancies were so crucial to the outward clearance and benefit as to prevent the appellant from noticing those

and reporting inappropriate action on part of the client to customs authorities. The facts do not invite the invoking of consequence of regulation 10(d) of Customs Broker Licencing Regulations, 2018 either. The Regulations have not, in any way, discharged ‘proper officer of customs’ from responsibility for undertaking functions under the Act and neither does the Act contemplate that the customs broker is the authorized person to whose compliance with the Regulations customs officers subordinate their statutory powers.

13. In the circumstances *supra* we find no reason that the detriment and penalty imposed in the orders should be allowed to survive. Accordingly the appeal is allowed and the impugned order is set aside.

(Order pronounced in the open court on 31/05/2023)

(S K MOHANTY)
Member (Judicial)

(C J MATHEW)
Member (Technical)