CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87481 OF 2023

[Arising out of Order-in-Original No. 12/CAC/PCC(G)/SJ/CBS Adj dated 11th 23rd May 2023 passed by the Principal Commissioner of Customs (General), Mumbai.]

Simon Brothers P Ltd
A-403, Gokul Arcade, 4th Floor, Subhash Road
Vile Parle (East), Mumbai- 400 057. … ***Appellant***

versus

Commissioner of Customs (General)
New Customs House, Ballard Estate, Mumbai- 400 001. ***…Respondent***

APPEARANCE:

Shri Lilesh P Sawant, Advocate for the appellant

Shri Krishna Murari Azad, Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87120/2024

DATE OF HEARING: 04/06/2024
DATE OF DECISION: 28/11/2024

PER: C J MATHEW

This appeal of M/s Simon Brothers P Ltd, holder of customs broker licence no. 11/457, disputes the finding of Principal

Commissioner of Customs (General), Mumbai in order[1] revoking the said licence and forfeiting the security deposit thereon under regulation 14 of Customs Brokers Licensing Regulations, 2018. Proceedings were initiated against the appellant, on charges of breach of regulation 1(4) of Customs Brokers Licensing Regulations, 2018 and regulation 10(d), 10(e), 10(f), 10(m) and 10(n) of Customs Brokers Licensing Regulations, 2018, *vide* notice dated 15th May 2018 consequent upon triggering by the offence report which was show cause notice dated 7th December 2017 issued under section 124 of Customs Act, 1962 in connection with import of mobile phones *vide* bill of entry no.7815137/ 14.12.2016 and bill of entry no. 8099310/06.01.2017 filed by M/s Creative Sales and Marketing that were found to contain not only undeclared mobile phones – 'bar' and 'smart' – but also not in compliance with BIS standards as well as intellectual property rights (IPR) requirements.

2. The proceedings, thus initiated, concluded with order dated 10th May 2019 revoking the licence and forfeiting the entire amount of security deposit which, on appeal, was remanded back by the Tribunal on the finding that substantive reliance placed by the licensing authority on statements recorded under the Customs Act, 1962 during investigations was inconsistent with principles of natural justice mandating independent disposal of charges framed under Customs

[1] [order-in-original no. 12/CAC/PCC(G)/SJ/CBS Adj dated 11th 23rd May 2023]

Brokers Licensing Regulations, 2018. Thereafter, following a fresh enquiry and, on the basis of the report dated 26th December 2022 - which was responded to by the customs broker on notice issued by the licensing authority of intent to proceed on those findings – of Inquiry Authority, detriments in the order now impugned before us were visited on the appellant.

3. The primary issue for consideration in this proceedings is the conformity of the impugned order with the directions of the Tribunal on the former occasion. The imports, with which the customs broker was allegedly connected, were effected in December 2016 and January 2017 but with the notice prescribed for initiating action having been issued only in the following year Customs Brokers Licensing Regulations, 2018 was resorted to. It is seen from the records that the licensing authority had taken note that M/s Creative Sales and Marketing had effected eleven imports of which three, pertaining to the period before December 2016, and six, of imports between February 2017 and April 2017, were reported to be in conformity with the prescriptions as set out in Customs Act, 1962 and the Foreign Trade Policy (FTP). Thus only two consignments are concerned in the factual matrix of this dispute.

4. Among the charges levelled against the customs broker is one pertaining to prohibition on transferring licence. This is particularly

significant as the enquiry report, on the charges of breach of regulation 10 of Customs Brokers Licensing Regulations, 2018, has been erected on the finding that the impugned licence had been transferred to one Shri Hitesh Ajmera for consideration. This, in our view, is not a correct appreciation of charges of breach of violation of regulation 10, each of which would require to be sustained for imputation of misconduct arising from the obligation therein. A transferred licence is a voidable licence and, consequently, of irrelevance as far as regulation 10 of Customs Brokers Licensing Regulations, 2018 is concerned.

5. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

6. The customs broker had been charged with breach of regulation requiring advice to his client to comply with the provisions of law and, in case of non-compliance, to bring such to the notice of the designated authority; that the customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance; discharge of duties with utmost speed and efficiency and without any delay; not to withhold information contained in any order, instruction or public notice from a client; and to verify antecedent, correctness of the importer exporter code (IEC) as well as identity of client.

7. It appears to us that the licensing authority has not appreciated the scope and extent to which these charges – all mutually exclusive – could be invoked on a given set of facts or allegation. Among the charges enumerated, those pertaining to advising the client to comply with the provisions and of verifying of antecedents and information may be established by reference to the manner in which the consignments came to be cleared by the customs broker. The other charges, *viz.*, breach of regulation 10(e), 10(f) and 10(m) of Customs Brokers Licensing Regulations, 2018, come into play only when clients raise a complaint of such a nature before the licensing authority. It may not be overlooked that the customs broker, whether an individual, a firm or a company, has been tested and found fit by the licensing authority to assist importers/exporters in clearance of cargo and that it is such approval which affords assurance of competent service to importer/exporter. There is, thus, an obligation on the part of the regulatory mechanism to proceed against customs brokers in the event that their services had been less than satisfactory. The assumption that every one of these obligation is related solely to the relationship between the customs broker and customs authorities is not only inappropriate but also not the intent of the Regulations. There is no record of any complaint or grievance on the part of the client for factual evaluation thereof, in the context of specific imputation of mis-conduct in relation to the stipulation of regulation 10(e), 10(f) and

10(m) of Customs Brokers Licensing Regulations, 2018, that the inquiry was required to attend to. Even assuming, without going into the merits of the findings that the licence had been operated by Shri Hitesh Ajmera, the stipulation of non-transferability of licence should not rest on statements alone. We take note that the presumption of licence having been transferred stems from an admission that ₹ 21,00,000 had been paid out to one of the Directors of appellant-customs broker. Terms of private employment, which may be unbeknown to governmental authorities, can take multifarious forms and it is not unknown for an employer to charge an employee for appointment to job; such payment alone may not suffice for concluding that the licence has been transferred. This finding of ‘transfer’ has influenced the finding on the other charges. As we have premised above, each charge should stand on its footing and facts and not dependent on findings on one or other of the charges. Therefore, findings of the enquiry authority, and the reliance placed upon by them by the licensing authority, is not in consonance with the scope and mandate of the Customs Brokers Licensing Regulations, 2018. That this matter is before the Tribunal after remand on the former occasion and concluded thereupon in enquiry conducted without the participation of the customs broker further vitiates conformity with the directions issued then. That the proceedings had been carried out in the absence of the customs broker, and attention thereof drawn in response to the notice by the licensing authority, were not taken into consideration by the licensing authority. Thus, the direction of the Tribunal, for rendering a finding in accordance with the Customs Brokers Licensing Regulations, 2018 without reference to show cause notice issued under the Customs Act, 1962, has not only not been complied with but further exacerbated by non-consideration of submission of the 'customs broker' before the licensing authority that the penalty of ₹ 1,00,000 imposed under section 117 of Customs Act, 1962, had been set aside by the first appellate authority in order dated 11th July 2019. Thus, the combination of both the conduct of the proceedings in the absence of the customs broker and non-consideration of the setting aside of the proceedings initiated under the Customs Act, 1962 is contrary to prescription of natural justice. In *Ramlala v. State of UP and Ors [2023 SCC OnLine All 2479]*, the Hon'ble High Court of Allahabad placed the reliance on the decision of the Hon'ble Supreme Court in *The Board of High School and Intermediate Education, UP v. Kumari Chitra Srivastava [(1970) 1 SCC 121]* and observed that

> *'10. ..... has categorically stated that the principles of audi alteram partem are required to be followed even if the same is burdensome in nature. Justice S.M. Sikri in his inimitable style stated as follows:*
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> > *"Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law."*

8. In the light of the emphasis on the compliance with principles of natural justice in such proceedings that have bearing on right to practice trade or profession, the findings in the impugned order are unacceptable.

9. In order to ensure that these are complied with, we are left with no alternative but to set aside the impugned order and remand the matter once again adjuring the licensing authority to ensure strict compliance with principles of natural justice in hearing the customs broker besides taking note of our observations *supra* as well as provisions of Customs Brokers Licensing Regulations, 2018. Accordingly, the appeal is allowed by way of remand.

(Order pronounced in the open court on 28/11/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*