CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85351 OF 2024

[Arising out of Order-in-Original No: 62/CAC/PCC(G)/ SJ/CBS-Adj dated 09th January 2024 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai-I.]

M D Ruparel & Sons
Torana Apartment 1A, Sahar Village Road
Andheri East, Mumbai - 400099. … ***Appellant***

versus

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

APPEARANCE:

Shri J C Patel, Advocate for the appellant

Shri Ranjan 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: 87414/2024

DATE OF HEARING:	05/06/2024
DATE OF DECISION:	04/12/2024

PER: C J MATHEW

M/s M D Ruparel & Sons, holder of customs broker licence[1] found themselves amidst the 'make-believe' world of 'dream

[1] no. 11/244

merchants' from which they were transported back to the 'real world' from having been subjected to proceedings under Customs Brokers Licensing Regulations, 2018.

2. Briefly, the appellant had filed bills of entry no. 4963255/07.08.2021 and no. 5466407/16.09.2021 for M/s Firoza Movie International Enterprises, who, having procured 'blank cartridges 9mm Kaiser' that they informed as also to be 'air gun pellet dummy', sought clearance thereof in line with similar imports that had been permitted in April and June of the same year through another customs broker.

3. It would appear that the first of the imports was cleared after examination while the second, upon being sent for forensic test and found to be 'blank cartridges' which are restricted for imports, was, along with the other, subjected to proceedings under Customs Act, 1962 by issue of show cause notice to the importer while the licence of the appellant herein was suspended but restored by order[2] of the Tribunal on appeal.

4. Proceedings initiated under Customs Brokers Licensing Regulations, 2018 underwent process of enquiry and the report thereof dated 13th September 2023, holding that, of the four charges, three – breach of regulation 10(d), 10(e) and 10(f) – stood proved while that

[2] [final order no. 86016/2023 dated 28th June 2023]

of breach of regulation 10(n) was not. Agreeing with the order of enquiry, Principal Commissioner of Customs (General), Mumbai, *vide* order[3], revoked the licence and forfeited security deposit under regulation 14 of Customs Brokers Licensing Regulations, 2018 besides imposing penalty of ₹ 50,000 under regulation 18 thereof.

5. Learned Counsel for the appellant submitted that, in the impugned proceedings, principles of natural justice had been violated inasmuch as the documents relating to the earlier imports, that had been cleared without objection, were not provided to them and that statements of the importer as well as the report of the Central Forensic Science Laboratory (CFSL), Hyderabad, which had been relied upon, were not tested through cross-examination of both - the deponent as well as the licensing authority – despite their request.

6. Learned Counsel placed reliance on the decision of Hon'ble High Court of Telangana in *Shasta Freight Services Pvt Ltd v. Principal Commissioner of Customs, Hyderabad [2019 (368) ELT 41 (Telangana)]* and on the decision of the Hon'ble High Court of Delhi in *Basudev Garg v. Commissioner of Customs [2013 (294) ELT 353 (Del.)]* and drew attention to the decision of the Tribunal in *AB Paul & Company v. Principal Commissioner of Customs (General)* in order[4] disposing of appeal[5] challenging order[6] of Principal

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[3] [order-in-original no. 62/CAC/PCC(G)/SJ/CBS-Adj dated 09th January 2024]
[4] [final order no. A/85907/2023 dated 2nd June 2023]

Commissioner of Customs (General), Mumbai. It was further submitted that the time-lines prescribed in regulation 17 of Customs Brokers Licensing Regulations, 2018 had not been complied with inasmuch as the offence report, dated 30th May 2022, was followed by show cause notice only on 26th September 2022 and that the enquiry report itself was submitted almost a year thereafter on 13th September 2023 and the order itself on 9th January 2024 exceeding the prescribed deadline substantially at each stage.

7. It was further submitted that the facts of the case would not withstand the scope of regulation 10(d), 10(e) and 10(f) of Customs Brokers Licensing Regulations, 2018 inasmuch as the declarations were made in full and that failure of the assessing authorities in permitting clearance under section 47 of Customs Act, 1962 should not be transferred to the customs broker. It was submitted that, while the charge of breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018 has been held to be proved, the licensing authority had misconstrued the scope thereof, of advising client to comply with the provisions of statute, and had digressed, instead, on the potential threat to public safety and injury to human life, which are matter of concern to police authorities but not relatable to advice that a customs broker should render. It was submitted by him that there had been no attempt at any stage by the importer or themselves to

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[5] [customs appeal no. 86451 of 2022]
[6] [order-in-original no. 11/CAC/PCC(G)/SJ/SBS Adj. dated 13th May 2022]

portray the goods as anything other than ‘blank cartridges’ and, consequently, there could be no breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018.

8. Insofar as breach of regulation 10(e) of Customs Brokers Licensing Regulations, 2018, requiring customs broker to exercise due diligence in ascertaining correctness of any information which is imparted to the client, was concerned, Learned Counsel submitted that the licensing authority had relied on the statement of the importer without subjecting the contents thereof to the prescription of section 138B Customs Act, 1962. Furthermore, it was contended that the importer had not been offered for cross-examination at any stage of the proceedings. He further submitted that, on the factual matrix of the charges, there was nothing on record to suggest that the client had required any information that was incorrectly responded to. He contended that, on the contrary, the client herself had experience of previous imports and, in turn, had advised them of the free importability as the norm.

9. The charge of breach of regulation 10(f) of Customs Brokers Licensing Regulations, 2018, requiring the customs broker not to withhold information contained in any order, instruction or public notice from client who is entitled to such information, has been held to be proved on the ground that the principal person was aware of

licence requirement under Arms Act, 2006 for such procurement and, despite which, restricted goods were entered for import in the bills of entry. According to Learned Counsel, the factual narrative in the proceedings does not suggest that any information was withheld from the client and that, on the contrary, the client herself had come forward to describe the goods with no room for any misunderstanding or requirement of advice.

10. It is also submitted that, considering the limited scope for misuse of the goods, as well as the assessable value being limited to slightly over ₹ 2,50,000, imposition of all the detriments available under Customs Brokers Licensing Regulations, 2018 was disproportionate.

11. We have heard Learned Authorised Representative at length.

12. At the threshold of every proceedings which has the effect of altering the ‘near’ ‘master-servant relationship’ between the licensing authority and the licensee, the prescriptions in the Regulations stand rigid and immutable. The substantial delay that occurred between the offence report of May 2022 and the final determination of proceedings on 9th January 2024, which has outstripped prescriptions set out in regulation 17 of Customs Brokers Licensing Regulations, 2018, was, though brought before the licensing authority, discarded by drawing upon the decision of the Hon'ble High Court of Bombay in *Principal*

Commissioner of Customs (General), Mumbai v. Unison Clearing P Ltd [2018 (361) ELT 321 (Bom). The licensing authority attempted to justify the delay on the ground of transfer of officers having impeded conclusion of enquiry within the prescribed period.

13. The licensing authority is entrusted with responsibility, including of all aspects of statutory and administrative roles, by assumption of office and such official, found fit to hold the charge, as determined by the Central Board of Indirect Taxes and Customs (CBIC), is, doubtlessly, considered competent enough to discharge all aspects of the office efficiently. That the Principal Commissioner of Customs (General) now explains that only one aspect of such responsibility had been accorded more significance to the detriment of others does not set well with both administrative reach and the faith reposed by superior authorities. There is nothing on record to suggest that the licensing authority was not aware of the prescriptions of law or that he was not competent by any stretch. To us, the justification appears as mere specious excuse. It is not even the case of the licensing authority that it was the enquiry officer who had been transferred with adjunct disruption of the process; it was the responsibility of the enquiry officer to complete proceedings within the stipulated time and for the licensing authority to take proceedings to its logical conclusion within time as stipulated. The Hon'ble High Court, in *re Unison Clearing P Ltd*, had held that the stipulations in

regulation17 of Customs Brokers Licensing Regulations, 2018 would acquire the character of being directory upon demonstration that ‘customs broker’ was responsible for the delay in completion of the proceedings. That is not the case here; on the contrary, it would appear that the administration had, for one reason or the other, failed to comply with the prescriptions. In *re AB Paul & Company*, the Tribunal has held

> *‘14. Though the said decision has categorically held that time-lines in the Regulations are to be deemed as ‘directory’, the context is not without significance. It was held that setting aside of revocation, at the appellate level, by resort to ascertainment of conformity with time-lines, would defeat the intent of Regulations that is substantively elaborate in enacting framework for supervisory oversight of customs brokers. Nonetheless, the Hon’ble High Court of Bombay also noted that, without justification for delay in completion of proceedings demonstrated by findings on the contributory negligence of the notice-broker, the licencing authority is not permitted to take shelter behind ‘directory’ nature of the time-lines. Impliedly, the time-lines are deemed to be directory at the appellate stage and an order of detriment under the authority of Regulations is, in circumstances of non-adherence to times lines, not tenable in the absence of justification for delay. ‘*

14. Considering the circumstances in which the licensing authority has attempted to transform mandatory stipulations as directory without being in consonance with the decision of the Hon'ble High Court of Bombay in *re Unison Clearing Pvt Ltd*, the proceedings

failed at the threshold itself. We are not required to assess the merit of the submission on behalf of appellant.

15. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 04/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*