CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87583 OF 2023

[Arising out of Order-in-Original No: 39/CAC/PCC (G)/SJ/SBS Adj dated 13th September 2023 passed by the Principal Commissioner of Customs (General), Mumbai.]

Sarajdeep Logistics Pvt Ltd
Room no. 1 & 2, 1st Floor, Shipping House
26, Kumtha Street, Fort Mumbai - 400038 … ***Appellant***

versus

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

APPEARANCE:

Shri Anil Balani, 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: 87455/2024

DATE OF HEARING: 13/06/2024
DATE OF DECISION: 12/12/2024

PER: C J MATHEW

This appeal of M/s Sarajdeep Logistics Pvt Ltd arises as consequence of revocation of customs broker licence no. 11/2551, along with forfeiture of security deposit, under regulation 14 of Customs Brokers Licensing Regulations, 2018 and the imposition of penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018 in order[1] of Principal Commissioner of Customs (General), Mumbai.

2. Proceedings commenced on the strength of offence report following examination of goods covered by bill of entry no. 3108623/31.10.2022 for import of 'assorted goods' from China by M/s Arise Enterprises handled by the appellant that were found to be contrary to the prescription of 'Foreign Trade Policy (FTP)' in force insofar as 'packaged products' are concerned and, insofar as 'toys' are concerned, not conforming with the quality control order for import. Though the licensee was alleged to have been in breach of regulation 10(b), 10(d), 10(m), 10(n) and 13(12) of Customs Brokers Licensing Regulations, 2018 and the enquiry proceedings held that regulation 10(d), 10(m) and 13(2) had not been breached, the licensing authority disagreed with the latter to place the customs broker on notice of intention to conclude proceedings for having been in breach of all.

3. Insofar as breach of regulation 10(b) of Customs Brokers Licensing Regulations, 2018 is concerned, it was held that the appellant was in breach of the stipulation that business should be transacted either

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[1] [order-in-original no. 39/CAC/PCC (G)/SJ/SBS Adj dated 13th September 2023]

personally or through authorized employee duly approved by the competent authority. Insofar as breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018 is concerned, allegedly the appellant was not compliant with obligation to advise the client to comply with the provision of the Act and, in the event of non-compliance, to bring the matter to the notice of the competent authority in case of non-compliance thereof. It was further alleged that failure to discharge duties with utmost speed and efficiency and without any delay was in breach of regulation 10(m) of Customs Broker Licensing Regulations, 2018. It was also alleged that failure to verify correctness of certain particulars as well as to ascertain identity of client and functioning at declared address was breach of regulation 10(n) of Customs Broker Licensing Regulations, 2018 and that, by failure to exercise supervision over proper conduct by employees, regulation 13(2) of Customs Brokers Licensing Regulations, 2018 was breached.

4. Learned Counsel for the appellant submitted that the findings in the enquiry report were not in accordance with the stipulations in conduct of proceedings under Customs Brokers Licensing Regulations, 2018 as the allegations relied solely upon statements recorded under section 108 of Customs Act, 1962 which, according to him, was not in consonance with the decisions of the Tribunal in *Thakkar Shipping Agency v. Collector of Customs, Bombay [1994 (69) ELT 90 (Tribunal)]* and of the Hon'ble High Court of Telangana in *Shasta*

Freight Services Pvt Ltd v. Principal Commissioner of Customs, Hyderabad [2019 (368) ELT 41 (Telangana)]. It is also contended that the Hon'ble High Court of Bombay had, by order[2] dated 4th October 2022 in *Jayesh Shah v. Union of India,* had held that

> *'6. Admittedly, the goods came in sealed containers. Mr. Balani has placed on record seven Bills of Lading by which seven containers arrived at Nhava Sheva Port. The seven containers are 40 ft. containers and were Full Container Load (FCL) containers. The Bills of Lading also provided for disclaimer by carrier. The description of goods in Bills of Lading also states; "Shipper's Load and count xxx cartons", and particulars were furnished by Merchant. When it is FCL container, then it is common knowledge that the container is sealed by shipper and a sealed container is handed over to the carrier whose obligation is to discharge the container with intact seal that was put before shipment. It is nobody's case that those seals were ever tampered with by anyone. Therefore the 7x40 ft. containers having arrived with intact seal (in fact it is quite clear that the containers were stuffed by the shipper or exporter at Huangpu Port, China) there is no question of Petitioner knowing what was stuffed in those containers. Moreover, it is nobody's case that Petitioner knew what was contained in those containers and even if there is any allegation, which we could not find in the impugned order, there is no finding as to how Petitioner would have known what was there inside the sealed containers.*
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> *7 Mr. Mishra submitted that in paragraph 2.13 of the impugned order it is recorded that Petitioner agreed that the goods were mis-declared grossly and many items were*

[2] [writ petition no. 1421 of 2021]

> *concealed. That cannot make Petitioner guilty of the offences charged. In the same paragraph, we have to note that, Petitioner has also stated that he was not aware that goods were misdeclared grossly and many items were concealed. In our view, if an FCL container has been loaded on board a ship, prima-facie, no-one except exporter or person who stuffed the containers will know what was inside the container.*
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> *8 The Custom House Agent, which the Petitioner was, only files the Bills of Entry on behalf of the importer relying on the documents provided to him by the importer, and if there is mis-match between what is mentioned in the documents given to the Customs House Agent to file Bills of Entry and what is found in the FCL container, prima-facie, the Custom House Agent cannot be made liable; Added to that in the case at hand the 7x40 ft. containers were FCL containers.*
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> *9 To impose total penalty of Rs.5.77 Crores on such Custom House Agent and without any satisfactory findings that he knew what was inside the 7x40 ft. containers or he knowingly or intentionally made any declaration would certainly cause undue hardship and more so to a person who has to file an appeal and deposit Rs.43,27,500/- being 7.5% of Rs.27 Lakhs plus Rs.5.5 Crores as pre-condition to filing an appeal.'*

to relieve brokers of any charge of complicity in declaration of contents of containers.

5. We have heard Learned Authorized Representative at length.

6. The authority issued to Mr Javed S Lalani was held to have been in breach of regulation 10(b), as well as regulation 13(2), of Customs

Brokers Licensing Regulations, 2018 by reliance on statement of one Robert S Chettiar which was also drawn upon by Learned Authorized Representative. In view of the decision of the Tribunal in *re Thakkar Shipping Agency*, the finding in enquiry proceedings under Customs Brokers Licensing Regulations, 2018 relying entirely upon statements, does not stand test of law to invalidate the finding on breach of these two obligations.

7. Regulation 10(d) of Customs Brokers Licensing Regulations, 2018 requires that a customs broker shall advice his client to comply with the provisions of statute which, once again, rests upon statement of the same Robert S Chettiar and suffering from infirmity stems from placing sole reliance on statements which are inadmissible. The finding thereon must be similarly invalidated. The charge of failure to discharge duties as customs broker without delay and with speed has been held as proved from alleged failure of the customs broker to seek clarifications as well as ensuring compliance of rules and regulations by the importer, A more incorrect construing of this provision is not manifest. The consequence of breach of this obligation is the suffering that an importer/exporter would be put to and the erroneous inference by the licensing authority that every obligation in regulation 10 of Customs Broker Licensing Regulations, 2018 is intended for the licensee to be surrogate of the licencing authority for education of the client cannot be the basis for sustaining the charge. It is the licensing authority who

had appointed licensee under section 146 of Customs Act, 1962 owing to which importers/exporters are assured that, in engaging a broker, their interests are not prejudiced and, upon any violation of Customs Act, 1962 arising from incorrect advise that is set out by the client, this provision may be invoked by the licencing authority in penal proceedings. The invoking of this provision, therefore, may be triggered only upon such being elicited in the course of investigations. There is nothing on record to evidence such complaint and, consequently, this charge has no basis on fact or law.

8. Insofar regulation 10(n) of Customs Brokers Licensing Regulations, 2018 is concerned, the finding on stipulation that the particulars of the client by ascertained besides verification of the address thereof, is

> *'13.4 With regard to violation of Regulation 10 (n) of the CBLR, 2018:*
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> *Regulation 10. Obligations of Customs Broker: -*
>
> *(n) verify correctness of Importer Exporter Code (IEC)number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*
>
> *IO found that Shri Shakil Ahmed Abdul Rashid Ansari was a coordinator of the proprietorship firm M/s. Arise Enterprises. For a proprietorship firm, there is no concept of deemed partner. In a proprietor firm, there is one proprietor, and he*

> *conduct his business through various employees. Here, Shri Shakil Ahmed Abdul Rashid Ansari is not an employee of the firm rather, actual beneficiary and he was using the IEC issued to M/s. Arise Enterprises and was paying a pre-agreed sum to Mr. Anis Salim Lakhani. Further, Mr. Anis Salim Lakhani in his statement dated 09.11.2022 has stated that no one from CB firm has ever contacted him. Therefore, there is clear cut violation of the Regulation 10(n) of the CBLR, 2018. Accordingly, I hold that the charges of violation of Regulation 10 (n) of the CBLR, 2018 is 'Proved'.*

9. The finding therein, on the basis of which the charge has been held to be proved, are devoid of specifics of the incident in which the said regulation has been breached. That lack on facts is fatal to the confirmation of the charge.

10. In the light of the above findings, we set aside the impugned order and allow the appeal.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*