CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85613 OF 2024

[Arising out of Order-in-Original No: 77/CAC/PCC(G)/SJ/CBS-Adj dated 29th February 2024 passed by the Principal Commissioner of Customs (General), Mumbai Zone – I]

Cargo Yatri Private Ltd
B-52, Ashoka Complex, Near Mafco Market
Sector-18, Vashi, Navi Mumbai- 400 705. … ***Appellant***

versus

Principal Commissioner of Customs (General)
Mumbai Zone-I
New Custom House, Ballard Estate, Mumbai- 400 001 ***…Respondent***

APPEARANCE:

Shri ND George, Advocate for the appellant

Shri Deepak Sharma, 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: 85079/2025

DATE OF HEARING:	30/09/2024
DATE OF DECISION:	29/01/2025

PER: C J MATHEW

This appeal of M/s Cargo Yatri Private Ltd lies against revocation of their customs broker licence[1] and forfeiture of entire amount of security deposit under regulation 14 of Customs Brokers Licensing Regulations, 2018 besides imposing penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018 in order[2] of Principal Commissioner of Customs (General), Mumbai.

2. The offence report which triggered the proceedings was the importation of ‘black pepper’ and ‘cigarettes’ against bill of entry no. 4906299/04.03.2023 declaring the goods to be ‘perlite ores’ valued at ₹ 4,34,083 and assessed to duty of ₹ 46,772.

3. The licensing authority invoked breach of regulation 10(d), 10(e) and 10(n) of Customs Brokers Licensing Regulations, 2018 in the notice issued to them under regulation 17 of Customs Brokers Licensing Regulations, 2018 which were pressed into service while breach of regulation 10(e) of Customs Brokers Licensing Regulations, 2018, not having been held as proved in the inquiry, was not cause for the detriment.

4. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

5. Regulation 10(d) of Customs Brokers Licensing Regulations, 2018 prescribes that a customs broker is required to

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[1] [no. 11/2222]
[2] [order-in-original no. 77/CAC/PCC(G)/SJ/CBS-Adj dated 29th February 2024]

advice his client to comply with the provisions of statute and, in the event of non-compliance, to bring the matter to the notice of the designated official. This charge has been established on the finding that the appellant had never met the proprietor of the importing entity and had not contacted the holder of the Importer-Exporter Code (IEC) thus precluding rendering of advice. The purpose of this obligation is to ensure that the advice rendered, and in the context of such being sought by the client, would have to be legal and in conformity with the statutes and rules. It was, therefore, necessary for the licensing authority to establish, from facts and circumstances, that incorrect advice had been rendered to the client. On a perusal of the records, we find no such imputation of mis-conduct. Further, the appellant is a private limited company comprising of Directors and employees, and it would appear that the structuring of the organization had not been taken note of by the licensing authority. It may not be out of place to mention that in private sector employment, and in particular in the absence of any guidelines issued by the licensing authority, engagement could well be in the nature of apprenticeship or even contractual which, to all external appearances, may appear as intermediaries and especially to those employed in public service. Such rigour of ‘master servant’ relationship is not conceived either in the Customs Brokers Licensing Regulations, 2018 or even in section 146 of Customs Act, 1962. The licensing regulations are also bereft of any definition of ‘client’ and, it would appear that there is no bar on the importer/exporter approaching the customs broker through an employee/agent. The essence of this obligation is restricted to the advice given specifically in relation to a particular consignment and is not broad enough to place the onus of educating the importer/exporter on the letter and spirit of customs statute on the customs broker. The factual circumstances in which this charge came to be laid at the door of the ‘customs broker’ is not evident in the records. Imputations are inadequate, the findings based on facts which have nothing to do with the framework of the obligations and externalities have been grafted to conclude that the regulation has been breached.

6. The customs broker is, in accordance with regulation 10(n) of Customs Brokers Licensing Regulations, 2018, required to verify correctness of ‘importer exporter code (IEC)’, ‘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. The licensing authority has relied upon the non-response to summons, issued to the importer at their address at Malad, to conclude that the importer was not functional. On the evidence furnished by the customs broker, reporting communication with client-importer at their address, it has been noted by the licensing authority that these occurred only after filing of bill of entry. It also appears that the appellant had received

all the documentation including ‘know your customer (KYC)’ requirement only through a person claiming to act on behalf of importer. It is necessary for customs broker, to be particularly careful about credibility of clients before undertaking to handle customs procedures. The mandate of the obligation is for ascertaining the existence of the client, the operation of the premises at which the client is reported to be functioning and the documents that are required for imports and exports. It is apparent that the customs broker had not carried out the mandate of the obligation inasmuch as the importer was reported as not existing at the stated address and the customs broker has been unable to produce evidence not only of such existence but also of having verified the antecedent before securing the authorization for handling the consignment. In these circumstances, breach of regulation 10(n) of Customs Brokers Licensing Regulations, 2018 cannot but to be held as proved. As it is only this breach which may be held as proved, the imposition of all the detriments offered by Customs Brokers Licensing Regulations, 2018 appears to be disproportionate.

7. Considering the specific breach and the gravity of the consequence of such breach, ends of justice would be met by setting aside the revocation under regulation 14 of Customs Brokers Licensing Regulations, 2018 and imposition of penalty under regulation 18 of Customs Brokers Licensing Regulations, 2018.

Accordingly, we uphold the forfeiture of security deposit under regulation 14 of Customs Brokers Licensing Regulations, 2018. In order to effect restoration of the licence, it would be necessary for the appellant to make fresh security deposit in accordance with the Regulations.

8. The appeal is disposed off in the above terms.

(Order pronounced in the open court on 29/01/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*