CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86467 OF 2024

[Arising out of Order-in-Original CAO No: No. 18/CAC/PCC(G)/SJ/CBS-Adj dated 21st June 2024 passed by the Principal Commissioner of Customs (General), Mumbai.]

Sky Shipping
209, EMCA House, SBS Road, Fort, Mumbai- 400 001 … ***Appellant***

versus

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

APPEARANCE:

Shri Rajkumar Maji, Advocate for the appellant

Shri AK Srivastava, 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: 85478/2025

DATE OF HEARING: 15/10/2024
DATE OF DECISION: 24/03/2025

PER: C J MATHEW

Proceedings were initiated against M/s Sky Shipping, holder of customs broker licence[1] under regulation 17 of Customs Brokers Licensing Regulations, 2018 in connection with clearance of 'urea technical grade', which is restricted for import, against bill of entry no. 8162485/05.10.2023 for assessment of the consignment as 'urea fertilizer' by a client of theirs. The notice dated 9th January 2024 alleged breach of regulation 10(d), 10(e), and 10(m) of Customs Brokers Licensing Regulations, 2018 for compromising customs clearance by obtaining 'out of charge' of 9th October 2023 on the strength of examination of only three containers.

2. It would appear that the fulcrum of the case is that the 'risk management system (RMS)' had stipulated 100% examination with representative sample to tested which was intimated through handwritten instructions by the customs official concerned on the bill of entry and that, while the samples were duly drawn, only three of the containers had been produced for examination. It was alleged that the 'out of charge' so granted would have enabled clearance of the consignment in entirety but for the removal in stages owing to which remaining fifteen containers were intercepted. Allegedly, one employee had coordinated the entire exercise with the customs official and the sample, upon testing, was found to be other than as described in the bill of entry.

[1] [no. 11/690]

3. In the notice, breach of

> *'(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;'*

in regulation 10 of Customs Brokers Licensing Regulations, 2018 was imputed on the allegation that

> *'7. …….. The CB appears to have not advised the importer and actively connived with importer to escape from 100% examination of the goods after getting RMS instruction 100% examination of the subject goods. Further, the CB did not bring the matter i.e. RMS instruction 100% examination of the goods is being escaped, to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.'*

and of

> *'(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;'*

in regulation 10 of Customs Brokers Licensing Regulations, 2018 was founded on the imputation that

> *'7. …….. The CB in his statement before CIU, JNCH stated that he had requested the docks officer to examine the goods in container itself after getting RMS 100% examination instruction. Further, the CB never took a pain to bring the matter to the docks Deputy Commissioner of Customs or*

Assistant Commissioner of Customs as the examination of goods is being escaped after getting RMS instruction 100% examination. If the CB had taken efforts to examine the goods 100%, the violation of RMS instruction would have not been taken place.'

4. We are concerned only with these two charges therein as that of having breached

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

in regulation 10 of Customs Brokers Licensing Regulations, 2018, founded on

> *'It appears that CB M/s Sky Shipping has deliberately delayed to present the goods for examination before the docks officer. Thus, it appears that the CB has violated the provisions of Regulation 10(m) of the CBLR, 2018'*

was dropped as 'not proved' at the inquiry stage.

5. Before proceeding to assess the submissions of Learned Counsel and Learned Authorized Representative, who were heard at length, certain preliminaries must be taken note of. The distinction between the two grades of 'urea' would not be apparent in visual examination and samples would have had to be tested for distinguishment. Indeed, the drawn samples did show up the misdeclaration and we are unable to appreciate the consequence of non-examination of the other containers. It was alleged that the examination directions, though determined by

the system, was endorsed by hand; handwritten entries on documents pertaining to goods that had yet to be assessed and cleared on endorsement of ‘out of charge’ is not envisaged in the scheme of clearance. While the employee of the appellant, as well as the customs official concerned, may have been privy to this endorsement, the appellant, themselves, could be held to have been cognizant only from the system itself. This, then, appears to have been clearance effected, without apparent benefit to the importer, without the official concerned insisting on compliance with system directions. Neither the contours of collusion nor the extent for benefit to be derived by the importer – the means and the motive – appears to have been considered for drawing upon the allegations of breach of obligations in regulation 10 of Customs Broker Licencing Regulations, 2018 which were confined to obligations that pertain, in essence, to advising the client to comply with relevant laws and ascertainment of information furnished to client as being correct.

6. By its very nature, and the context of the Customs Broker Licencing Regulations, 2018, framed under the authority of section 146 of Customs Act, 1962 which empowers appointment of ‘customs brokers’ found fit, from knowledge and wherewithal, to handle consignments for importers and exporters by the licencing authority, it is obligatory to provide for consumer dissatisfaction. Such dissatisfaction, with consequence of deprivation of licence, would have

to be handled only through the licencing authority but not at its initiative. Not unnaturally, the obligation to the agency that enabled such licence to operate ‘brokership’ would exist as also those owed by the ‘broker’ to both. Conviction that all the breaches of regulation flow from identical imputations is not only demonstrative of lack of application of mind but also fatal to proceedings. Every allegation of breach would have to be imputed from facts and circumstances pertinent to the particular obligation.

7. The inquiry report found the appellant to have breached regulation 10(d) and 10(e) of Customs Brokers Licensing Regulations, 2018 and, thereafter, Principal Commissioner of Customs (General), Mumbai, the licensing authority, revoked the customs broker licence and forfeiting the security deposit under the authority of regulation 14 of Customs Brokers Licensing Regulations, 2018 while further imposing penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018 by order[2] impugned here. The licensing authority held breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018 to be proved for non-compliance with the direction to submit the entire consignment for examination, as evidenced by payment of service fee of only ₹ 3,750 (₹ 1,250 each TEU) and confirmation thereof from ‘closed circuit television cameras’ installed at the examination area, and thus establishing failure to advise the client

[2] [order in CAO no. 18/CAC/PCC(G)/SJ/CBS-Adj dated 21st June 2024]

to comply with the provisions of the Act, allied Acts and Rules and Regulations and failure, upon non-compliance thereof, to bring the matter to the notice of the Deputy Commissioner/Assistant Commissioner as the case may be.

8. The submissions of the Learned Authorized Representative that these suffice to establish breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018 from the conclusion that the appellant had failed to advice the client to compliance with the laws and rules fail to pass muster. Learned Counsel for the appellant pointed out that failure to comply with the systems instruction rested entirely with the customs officials and not with the customs broker. At no stage, he contended, was there any evidence to suggest that the appellant had persuaded the customs officials to overlook the direction for examination. It is also contended by Learned Counsel that the signatory of the documents had to be ‘G’ cardholder and there is no bar on a ‘H’ cardholder in assisting in the clearance of the goods.

9. There is no doubt that examination as set out in the ‘handwritten’ directions were not carried out. There is, however, no ascertainment of disinclination on the part of customs official, having granted ‘out of charge’ while cognizant of the directions, to carry out such examination and availability of contingent option to report to higher authorities. The drawal of samples which was sufficient to establish misdeclaration as

well presentation of three containers make it abundantly clear that appellant was either not aware of the contents or that there was no intent to conceal the offending goods from action under Customs Act, 1962. The failure to produce the remaining containers or to guide the client in that direction is, at best, a technical violation.

10. In the impugned order, there is also reference to an employee, holding a ‘H’ card instead of ‘G’ cardholder, presenting the documents to the officer at the docks. There is no allegation either that the said documents were ‘entered’ by the said employee; the ‘G’ card holder is not expected to present for the entire duration of clearance. We fail to appreciate this diversion of responsibility in ensuring the presence of only authorized personnel in customs areas. That his presence was contrary to standing orders, if at all, is not to blamed more on the customs access system than on the appellant.

11. We find no evidence to charge the customs broker with not advising the client on requirement to comply with the statues; nor of participation in compelling customs officials not to carry out examination. There is, thus, no evidence to hold that regulation 10(d) of Customs Brokers Licensing Regulations, 2018 had been breached except as noticed *supra*.

12. Insofar as requiring the customs broker to exercise due diligence to ascertain the correctness of any information which he imparts to a

client is concerned, contention of Learned Authorized Representative is that the requirement of the cargo having been subjected to examination in entirety was not carried is not under challenge. The licensing authority has relied upon the very same imputation of facts, *viz*., partial examination of the cargo, to conclude the obligation to have been breached.

13. It would appear to us that the licensing authority has mis-applied regulation 10(e) of Customs Brokers Licensing Regulations, 2018 which may be invoked only upon complaint from client of having been so misguided by customs broker. The requirements of examination was, admittedly, endorsed on the bill of entry and, in granting 'out-of-charge', the customs officials cannot but have been privy to such instruction. Failure of such customs officials to act on the instruction cannot be attributed to the customs broker inasmuch as the latter does not have the authority to enforce compliance on the part of the customs officials. Furthermore, at no stage, had the importer suggested that they had been advised to only furnish the goods partially for examination. owing to information imparted by the customs broker. In the absence of such imputation of misconduct and any finding to that effect it cannot be said that there is breach of regulation 10(e) of Customs Brokers Licensing Regulations, 2018. There is passing reference to alleged collusion of employee of the customs broker with customs officials that does not fall within the purview of regulation 10(e) of Customs Brokers

Licensing Regulations, 2018. Consequently, the facts alleged has no bearing on this particular obligation or breach thereof.

14. In the light of above, we find no reason to affirm the findings of the licensing authority in entirety. There is no defence from the appellant about the cause of non-compliance with inspection requirements in full and, in absence thereof, responsibility is to be presumed, at least partially, even if of no serious consequence. Consequently revocation of licence with forfeiting of security deposit is set aside. Imposition of penalty of ₹ 50,000 is sustained.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*