CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86933 OF 2024

[Arising out of Order-in-Original No: 22/CAC/PCC(G)SJ/CBS-Adj dated 2nd July 2024 passed by the Principal Commissioner of Customs (General), Mumbai.]

Krishna V Salgaonkar
7 Rapid House, Opp: ATC Gate, Suthar Pakadi
Sahar, Andheri (E), Mumbai - 400099 … ***Appellant***

versus

Principal Commissioner of Customs
Mumbai – I
New Customs House, Ballard Estate, Mumbai – 400001 ***…Respondent***

APPEARANCE:

Shri Chirag Shetty, 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: 85479/2025

DATE OF HEARING: 03/12/2024
DATE OF DECISION: 24/03/2025

PER: C J MATHEW

This appeal arises from the order[1] of Principal Commissioner of Customs (General), Mumbai-I, as a licensing authority under Customs

[1] [order-in-original no. 22/CAC/PCC(G)SJ/CBS-Adj dated 2nd July 2024]

Brokers Licensing Regulations, 2018 which was brought to bear on the appellant M/s Krishna V Salgaonkar (holder of customs broker licence no. 11/41) who had been proceeded against, as consequence of action initiated against exporters of ‘cut and polished diamonds’ under Customs Act, 1962, for alleged acts of omission and commission that were imputed to be in breach of regulation 10 of Customs Brokers Licensing Regulations, 2018.

2. The claim of the Learned Counsel appearing for the appellant is that the enquiry proceedings had exonerated the appellant of all the charges of having breached regulation 10(d), 10(e), 10(n) and 13(2) of Customs Brokers Licensing Regulations, 2018 and that the licensing authority had, without any basis, disagreed thereon to order of revocation of the licence along with forfeiture of the entire amount of security deposit besides under regulation 14 imposing penalty of ₹ 50,000 under regulation 18 of the Customs Brokers Licensing Regulations, 2018.

3. It is contended by Learned Counsel that the licensing authority, instead of applying its mind to the facts available, and on the basis of which alone charges should have been framed against the appellant, placed reliance upon conclusions in an investigation report of 11th January 2023 which was primarily intended for initiating proceedings for re-determination of value and for confiscation of the goods. It is

contended by him that the dispute was over valuation in which the manner of declaration was alleged to be not free from controversy and does not involve suggestion of any role therein on the part of customs broker. It was further submitted that the evidence in those proceedings were primarily drawn from statements recorded under section 108 of Customs Act, 1962 which, on their own, do not satisfy the requirement of proceedings under Customs Brokers Licensing Regulations, 2018 to be initiated only for breach of obligation of customs broker set out in regulation 10 and elsewhere therein. He contended that the licensing authority had neither supported disagreement with established facts nor had the imputation misconduct in relation to each of these obligations been analyzed as intended by the Regulations.

4. He pointed out that regulation 10(d) of Customs Brokers Licensing Regulations, 2018, stipulating that a broker advise client to comply with the provisions of the Act and other statutes and appendant obligation to bring non-compliance to the notice of designated authority, has been fastened on the appellant on the presumption that the broker was aiding and abetting illegal export. It was also pointed out that retraction of the statements relied upon to frame the allegation by the deponents before the enquiry officer had not deterred the licensing authority who, instead, sought to apply parameters set out in various decisions arising from consequence of

retraction to adjudication proceedings and not even one decision pertaining to proceedings under Customs Brokers Licensing Regulations, 2018 - which is not about ‘fiscal liability’ owed to the State – intended to govern an almost ‘employer–employee’ relationship.

5. On the allegation that the appellant had violated regulation 10(e) of Customs Brokers Licensing Regulations, 2018, which stipulates exercise of due diligence in ascertaining correctness of any information which imparted to a client with reference to any work related to clearance of cargo or baggage, Learned Counsel submitted that the licensing authority had again relied upon statements, purporting to establish a conspiracy in which exporter on record was a front, which had no relevance to the obligations set out in the said Regulations. Therefore, he contended, that the licensing authority had erred in particularizing facts and circumstances that did not, by any stretch, have any connection with the obligation in regulation 10(e) of the said Regulations.

6. It was contended that the allegation of having breached regulation 10(n) of Customs Brokers Licensing Regulations, 2018, mandatory verification of correctness of the several details of the client, relied primarily on to the absence of the exporter at the physical address claimed in the documents which extended beyond

the stipulation in the obligation as held in several decisions of the Tribunal.

7. It was submitted that the finding in the impugned order of the customs broker having failed to exercise proper supervision of conduct of employees and, therefore, responsible for all acts and commission/omission of such employees as set out in regulation 13(2) of Customs Brokers Licensing Regulations, 2018 relied upon statements which, *inter alia,* admitted that person purportedly to be an employee of the exporter had accompanied him for the several clearance requirements.

8. Learned Authorised Representative reiterated the facts that persuaded the licensing authority to conclude that breach of regulation 10(d), regulation 10(e) and regulation 10(n) of Customs Brokers Licensing Regulations, 2018. It was argued by him that the broker was aware of the meagre financial resources with the exporter as well as lack of capacity to handle consignment of such magnitude and that the failure on the part of the appellant to interact with exporters was apparent from the lack of knowledge admitted to by the directors during the course of their deposition before the customs authorities.

9. The entire case of the licensing authority appears to have been built upon the conclusion that the ‘exporter on record’ were a mere fronts and that the beneficiary of the admitted ‘over-valuation’ were

those who controlled the transactions behind the scenes. Those are matters that may be in the purview of Customs Act, 1962 in relation to assessment including reopening of assessment and confiscation proceedings under the Customs Act, 1962 which stand on entirely different footing; while the facts deployed thereon may well be the basis for initiating proceedings under Customs Brokers Licensing Regulations, 2018, acts of omission or commission that are contrary to the specifity of each obligation alleged to have been breached must be evidenced. One of the essential aspects to be considered in such proceedings is that each obligation stands on its own and that the application of common facts to mutually exclusive obligations demonstrates lack of application of mind. It also needs to be noted that the licensing authority acquire power to deprive the licence from having certified that 'customs broker' is fit to undertake filing and other activities for clearance of imported/exported goods and, therefore, commanded for engagement by importers/exporters. Consequently, the obligations go beyond that owed to the issuer of the licence by licence-holder to that of obligations owed to cleint. Disciplinary consequences are, thus, not limited to the former but to the latter and licensing authority would be incorrect in invoking some of the obligations with express dissatisfaction of the client having been placed on breach. Initiation of proceedings unilaterally by the licensing authority is inappropriate and should necessarily have been preceded by complaint or grievance adduced by the client to the licensing authority. In the impugned order, there is neither hint nor whisper of such grievance on the part of the client and yet that did not deter the licensing authority from holding that the customs broker had deviated from the obligations set out in regulation 10(e) of Customs Brokers Licensing Regulations, 2018 which only the client could be concerned with. The facts relied upon, as well as the conclusion thereupon, in the impugned order are far from that contemplated under regulation 10(e) of Customs Brokers Licensing Regulations, 2018. We are, therefore, not hesitant in holding that the licensing authority has erred to hold that to be proved.

10. There is, of course, a fundamental stipulation that it is the responsibility of the customs broker to advice client to comply with all the statutory provisions that applicable to clearance of the goods belonging to the client. It is, however not necessary that every single provision in the several statutes would have to be intricted to the client. Neither is it necessary that it is the owners/officials of the importer/export entity who should be subjected to such education. That well may be impossible and it clearly not the intent of the Regulation that the customs broker should conduct a teachimg course on procedural and legal stipulations pertaining to clearance of the goods. The breach of such obligation would have to be inferred from facts which demonstrate negligence on part of customs broker to

advice contextually. As we have already noted, the issue is one of valuation; valuation is, at best, matter of conjuncture that, for the for the purpose of Customs Act, 1962, is set out in the Rules notified under section 14 of Customs Act, 1962. We find no evidence in the impugned order that the goods in question were subjected to re-valuation in accordance with those rules or that the licensing authority was aware of the manner in which the goods were subjected to be valuation without which the role of the customs broker in overvaluation is not ascertainable. There is no evidence on any other aspect of assessment and clearance that was breached by the customs broker. There is, thus, no evidence to conclude that the licensing authority was correct in determining breach of regulation 10(d) of Customs Brokers Licensing Regulations, 2018.

11. It has been alleged that the appellant had failed to exercise due diligence on supervision over the acts of the employees. It may well be that the employees of the appellant had dealt a person with other than one of the directors of the exporting organization. It may also be that the ‘exporter on record’ may have been by others but the stipulation in regulation 13(2) of Customs Brokers Licensing Regulations, 2018 pertains to activities between entry of the goods for export and its clearance thereupon. No evidence is available on record to indicate that, during the process from filing of shipping bill under section 50 of Customs Act, 1962 to clearance thereafter under section

51 of Customs Act, 1962, the employees had been negligent or complicate enough to warrant the customs broker to be responsible vicariously. Therefore, the allegation of the appellant having been breach of regulation 13(2) of Customs Brokers Licensing Regulations, 2018 does not find favour.

12. It has been alleged that, had the customs broker had failed to carry out necessary verifications owing to which the alleged violation of Customs Act, 1962 by the exporter was facilitated. We find it inconceivable that the entire responsibility devolving on customs officials should be transposed on to the customs broker. The customs broker is neither a public servant nor an officer of customs to be burdened with statutory responsibility of assessment that devolves on 'proper officer' and other designated officials. The acts of omission/commission on the part of the customs broker is to be judged only in terms of obligations that devolve on them. There is no doubt that the antecedents of the client need verification and, to the extent that the specifics of such verification are set out in the said Regulation, existence of documentation would suffice as compliance. There is no allegation that the client was not in possession of genuine importer-exporter code (IEC) or, for that matter, of GST registration. Nonetheless, the records do show that no operations appeared to have been carried out at the declared address of the exporter. Whether verification of the premises would have prevented overvaluation of

goods is moot; however, that the exporter did not operate at the declared address indicates that the verification carried out by the customs broker was but cursory or non-existent. Licences issued to customs brokers is not merely an entry into practice of a trade or profession but is contingent upon expectation on the part of licensing authority that antecedents of importer/exporter are not doubtful. Nothing has been brought on record which, in the light of the finding that the exporter did not exist at the declared address, could evidence that the premises was verified to place of operation at one of the point in time or that the conclusion of the licensing authority was erroneous. It would, therefore, appear that the appellant had restricted itself to verification of documents to the extent of availability in the public domain. Clearly, undertaking of work on behalf of the exporter without proper knowledge about the activities of the exporter is in breach of the obligation devolving on the customs broker under regulation 10(n) of Customs Brokers Licensing Regulations, 2018. To the extent that the licensing authority has held that the customs broker to be in breach thereof, we find no reason to disagree thereupon. The charge of violation of regulation 10(n) of Customs Brokers Licensing Regulations, 2018, is therefore, upheld.

13. In the light of the finding *supra* that only regulation 10(n) of Customs Brokers Licensing Regulations, 2018 stands affirmed, fastening of all the detriments available in the Regulation is clearly

disproportionate. We, therefore, hold that the imposition of penalty under regulation 18 of Customs Brokers Licensing Regulations, 2018 suffices to meet the ends of justice. Accordingly, while setting aside the revocation of licence and forfeiture of security deposit, we uphold the imposition of penalty of ₹ 50,000.

14. The appeal is, thus, disposed off by modifying the impugned order.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*