CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86361 OF 2024

[Arising out of Order-in-Original No: 16/CAC/PCC(G)/SJ/CBS-Adj dated 10th June 2024 passed by the Principal Commissioner of Customs (General), Mumbai.]

East West Freight Carriers Ltd
62, Adarsh Industrial Estate, Sahar Road, Chakala,
Andheri (East), Mumbai – 400 099 … ***Appellant***

versus

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

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri Krishna Murari Azad, 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: 85480/2025

DATE OF HEARING:	26/09/2024
DATE OF DECISION:	25/03/2025

PER: C J MATHEW

M/s East West Freight Carriers Ltd, holder of customs broker licence[1], are aggrieved by order[2] of the licensing authority, Principal Commissioner of Customs (General), Mumbai, revoking the licence and forfeiting of security deposit, under regulation 14 of Customs Broker Licensing Regulations, 2018, while imposing penalty of ₹ 50,000, under regulation 18 of Customs Broker Licensing Regulations, 2018, despite the charges set out for initiation of the proceedings, *viz*., alleged breach of regulation 10(d), 10(e) and 10(f) of Customs Broker Licensing Regulations, 2018, having been held as 'not proved' in the enquiry proceedings. The licensing authority had, upon scrutiny of the enquiry report dated 1st February 2024, proposed revision thereof by disagreement memo of 7th March 2024 which was followed with termination of licence and other detriments.

2. The proceedings itself was one of several initiated against several in connection with drawback allegedly claimed in excess of eligibility by several exporters, and facilitated by one Mr Suhel Ansari, who had furnished fraudulent invoices of purported suppliers of textile articles and operated back accounts for such suppliers to evince trade transactions. M/s Doshi Impex, one such exporter, had effected shipments against 18 bills between 2012 and 2016 and availed drawback of about 9,49,000 of which seven had been handled by M/s East West Freight Carriers Ltd. Allegedly, the exporter had procured

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[1] [no. 11/595]
[2] [order no. 16/CAC/PCC(G)/SJ/CBS-Adj dated 10th June 2024]

goods from the open market without any documents and, in exporting these under claim for drawback, had breached the stipulation in regulation 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 disentitling such goods to the extent that duty liability had not been discharged on these.

3. The appellant herein was charged with negligence in advising the claimant to comply with provisions of Customs Act, 1962 as well as other Acts and Rules and, if they had, in failing to report non-compliance to the designated authority, for failure to exercise due diligence in ascertaining correctness of any information imparted to the client and for failing to adhere to the obligation not to withhold any order, instruction or public notice relating to clearance of cargo.

4. According to Learned Consultant, the finding of the licensing authority, leading to the determents now under challenge, demonstrated non-application of mind on the facts unearthed by the investigation of several exporters, including M/s Doshi Impex and with complicit of the above referred Suhel Ansari, having shipped 'inferior goods' against fraudulent documents with intent to avail ineligible drawback, the failure to file the declaration detailing particulars of the supplier of goods as prescribed in circular[3] and in having obtained ineligible drawback evidenced by the value at which these were cleared at

[3] [no. 16/2009-Customs dated 25th May 2009]

destinations in which the customer of the appellant. He submitted that the licensing authority, instead of evaluating these facts in the context of mutually exclusive obligations enumerated in each of the regulations alleged to have been breached, had merely reproduced the charges and, without countering the records of the finding of the inquiry authority, merely reiterated these. It was further contended that even the facts, such as they were, were mere conjunctures and surmise and, particularly, on value which, in our view, are factual aspects of the larger investigation to be subjected to evaluation in proceedings initiated, if at all, under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995; this proceeding is concerned only with the purported actions of the appellant in the context of the three regulations said to have been breached.

5. Learned Consultant contended that there was nothing on record to indicate that the appellant herein was part of a larger conspiracy, if any, to avail ineligible drawback; more so, he contended, as the goods had been physically examined before export upon which responsibility of the appellant, who had no role either in procurement of the goods or engagement with overseas customer, concluded. It was his contention that Customs Broker Licensing Regulations, 2018 imposed obligations on licensee only for the limited purpose of clearance of imported goods and handling of export cargo between filing of the shipping bill under section 50 of Customs Act, 1962 and the grant of ‘let export order’

under section 51 of Customs Act, 1962. He contended that none of the facts and circumstances relied upon in the charge-sheet could lead to a conclusion of breach of the charges. According to him, the finding of the inquiry vindicated this stand of the appellant.

6. According to him, the first of the charges, *viz.*, advising clients to comply with statutory provisions, does not stem from any drill envisaged under the regulations or under Customs Act, 1962 and is intended to be invoked upon some aspect of the export consignment that is so glaringly evident, or so remotely out of place, as to be perceptible to an average person and, hence, inferable as consequence of no advice or ill advice. Likewise, it was his contention that the second charge, relating to ascertainment of correctness of any information imparted to a client, flows from some aspects of export declaration or process having been found to be contrary to Customs Act, 1962 and attributable to dissemination of information to client. He contended that neither does the charge-sheet record such situation nor is the mis-declaration of value by exporter identifiable so. He further submitted that, at no stage, had the exporter complained about having had any incorrect information furnished by the appellant. He further contended that the appellant had not breached the requirement of communicating information contained in instructions or public notices insofar as the export is concerned. On the finding of the licensing

authority that circular[4], prescribing mandatory declarations, he submitted that

> *'6. …….. However, as an abundant precaution, the merchant exporters sourcing their goods from the market and claiming central excise portion of duty drawback may be asked to specifically declare, at the time of export, that no rebate (both input rebate and final product rebate) shall be taken against the exports made against these shipping bills.'*

therein makes it clear that there was no such mandate and that, in any case, it was for officers of customs to raise the issue of lack of such declaration while handling the shipping bill.

7. We have heard Learned Authorized Representative who submitted that the attempt to obtain ineligible drawback was abundantly clear from the circumstances and that the appellant had failed to brief the exporter on the significance of the declarations owing to which the three regulations were breached.

8. On a perusal of the findings of the licensing authority, and which, presumably, are to have arisen from detailed elaboration in the disagreement memo, it would appear that all three charges were framed on the presumption of conspiracy to avail ineligible drawback and non-compliance with the mandate to file declarations. We find that the alleged conspiracy is mere narration of events and episodes leading to

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[4] [no. 16/2009-Customs dated 25th May 2009]

the eventual decision to proceed against the appellant, and others, under the Customs Broker Licensing Regulations, 2018. It was necessary for the licensing authority to depict the elements of this conspiracy in terms of the stipulations in Customs Act, 1962 that were breached thereof and attributable, in part at least, to failure in advising the client to comply with the statutory requirements, failure to ascertain information supplied to client owing to which the client had strayed and the failure to communicate the instructions in circulars and public notices. The second of the foundations of the proceedings, *viz.*, the circular[5] having been overlooked, has no bearing on the first and amenable to being invoked on its own as a factual base for the third charge.

9. As far as the second charge is concerned there appears to be an implicit assumption in initiation of the proceedings that each, and every, obligation of customs brokers has been designed to be fulfilled *vis-à-vis* customs authorities and, therefore, perceivable as inferences that the licencing authority, who is neither the customs authority in the connected incident nor the client of the customs broker, may choose. That breach of obligations is to be visited with proceedings prescribed in Customs Broker Licensing Regulations, 2018 is no ground for such presumption. This presumption is erroneous inasmuch as, while licensing authority, as creator of the licence, can expect the licensee to be bound to some obligations to itself, the certification of competence,

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[5] [no. 16/2009-Cus dated 25th May 2009]

inhering in the licence, is assurance that the diligence and knowledge of broker may be relied upon exporters/importers and contrarian behaviour may also be visited with detriment. Some obligations would, therefore, stem from that owed to clients and, hence, the determination of time lines with reference to 'offence report' which may originate with client. That perception of cause and effect has to be appreciated and comprehended for proper exercise of authority to punish brokers.

10. It was, therefore, necessary to demonstrate, at least circumstantially and other than merely factual ascertaining of paper work having been handled and of making the goods available for examination, that the appellant had occasion to draw the attention of the client to statutory stipulations but did not and, if done, chose not to report non-compliance thereof. Likewise, acts of omission or commission in relation to clearance of goods by exporter that emerge as attributable to incorrect information, furnished without ascertainment, from the customs broker should normally emanate from report by the client. From a reading of the charges, the imputation of misconduct and the findings in the impugned order, none of the facts and circumstances advance the proposition that regulation 10(d) and regulation 10(e) of Customs Broker Licensing Regulations, 2018 had been breached.

11. Turning to the contextual reference to the declaration prescribed

in the impugned instructions, it is seen that the licensing authority has merely concluded

> *'The facts of the customer exported goods in violation of the customs law indicates that the CB had withheld information to the customer in this regard'*

without remarking on the plea of customs broker that absence of prescribed declaration was as much, if not more, of responsibility of customs officials. It is not the case of the licensing authority that incorrect information had been furnished in the said declaration. There is no doubt that the declaration had to be made and, the deployment of 'abundant caution' in the instructions notwithstanding, it would appear that the said declaration was of not of insignificance in the procedure prescribed under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and handling of drawback claims but it has not been shown that customs broker had not advised the client about the documentation and that non-compliance thereof was not to be taken thereof by the proper officer except upon reporting by the broker. The finding of the licensing authority that the first two charges stand on this fact of non-compliance is erroneous.

12. The failure to file the declaration may at best, be considered a technical irregularity inasmuch as it was not noticed by the customs authorities either. In any case, the drawback claims in the seven shipping bills, even if ineligible, is not of such magnitude as to warrant

imposition of all the penalties and detriments available in the empowerment of the licensing authority. In our view, the interest of justice would be met by setting aside the revocation and forfeiture of security deposit under regulation 14 of Customs Broker Licensing Regulations, 2018 while upholding the penalty under regulation 18 of Customs Broker Licensing Regulations, 2018.

13. The appeal is accordingly disposed off.

(Order pronounced in the open court on 25/03/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

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