CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85590 OF 2024

[Arising out of Order-in-Original CAO No: 70/CAC/PCC(G)/SJ/CBS-Adj dated 6th February 2024 passed by the Principal Commissioner of Customs (General), Mumbai Zone – I.]

Atharva Logistics
02/401, Ozone Valley, Old Mumbai Pune Road,
Parsik Nagar, Kalwa (West), Thane – 400 605 … ***Appellant***

versus

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

APPEARANCE:

Shri Prasant Patankar, Consultant 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: 85794/2025

DATE OF HEARING:	06/11/2024
DATE OF DECISION:	05/05/2025

PER: C J MATHEW

This appeal lies against revocation of customs broker licence[1]

[1] [no.11/1761]

and forfeiture of security deposit under regulation 14 of Customs Broker Licensing Regulations, 2018 as well as imposition of penalty of ₹ 50,000 under regulation 18 of Customs Broker Licensing Regulations, 2018 in order[2] of Principal Commissioner of Customs (General), Mumbai Zone – I consequent upon proceedings initiated against M/s Atharva Logistics in connection with export of 'USB cables' by M/s Jamilar International Pvt Ltd which was found to have been overvalued.

2. The spectrum of penalties and detriments available to the licensing authority under Customs Broker Licensing Regulations, 2018 have been brought to bear matter even though the only shipping bill, *viz.*, no. 8720955/03.11.2018 on export of goods handled by them claimed value to be ₹ 71,18,595 for grant of refund of 'integrated tax' of ₹ 12,81,347. The harshness of the penalties and disproportionate detriments notwithstanding, it is also seen that the enquiry authority had held that all the three charges for breach of obligation, in regulation 10(d) and regulation 10(n) of Customs Broker Licensing Regulations, 2018, were but partly proved while that of breach of obligation in regulation 10(e) of Customs Broker Licensing Regulations, 2018 was not proved. There has been no record of disagreement memo, arising therefrom, furnished to the customs broker and that the licensing authority went on to impose the

[2] [order-in-original CAO no. 70/CAC/PCC(G)/SJ/CBS-Adj dated 6th February 2024]

detriments without taking into consideration that these had been only been partly proved given the impression that these were outcome of the breaches having been fully proved.

3. We are, therefore, required only to ascertain correctness of finding that breach of regulation 10(d) and regulation 10(m) of Customs Broker Licensing Regulations, 2018 are partially sustainable against the appellant herein and that the licensing authority was not incorrect insofar as proportionality is concerned.

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

5. The cause of action leading to the proceedings impugned before us rests upon alleged overvaluation of export goods. It is seen from the records that the overvaluation was established, and only in relation to the ‘live consignment’, upon market enquiry. The proceedings against the customs broker herein was launched owing to alleged connection with an export of the past in which valuation has been re-determined solely by reference to the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

6. Regulation 10(d) of Customs Broker Licensing Regulations, 2018 requires ‘customs broker’ to advise a client to comply with all rules and regulations and statutory requirements in connection with

the goods and to inform designated officials in the event of non-compliance. The charge itself has been founded upon imputation of

> *'16.3.1.4 I find that during the inquiry proceeding the exporter failed to submit any relevant document, such as Supplier's Tax invoice, bank transaction proof made with their supplier, proof of supplies of goods through documents viz, toll slip, lorry receipts and transaction documents which could vindicate that the transaction was fair and that the declared price of the export goods were genuine. The investigation agency revealed that the exported goods were overvalued to avail undue IGST refund. I note that this was the first consignment of the exporter, M/s. Jamilar International whom the CB did not know earlier and as stated by CB that they had not dealt earlier with the goods 'data cable' and so not having knowledge of its proper value. Hence, the CB was required to be more cautious and curious about the proper value of the goods so as to advise and ensure the correct declaration of value, before accepting the documents for filing Shipping Bill. I also find that CB cannot shy away from the responsibilities cast upon them under the Regulation 10(d) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility as the CB can the status of requires a minimum standards of knowledge for minimum standards of conduct and CB should be well versed in the provisions and regulations of the Acts, allied act. Therefore, it is clear that there is no contention in the CB's submission.*
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> *From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and in case of non-compliance did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.'*

Insofar as regulation 10(n) of Customs Broker Licensing Regulations, 2018 is concerned, 'customs broker' is required to verify antecedents, correctness of importer exporter code (IEC), goods and services tax identification number (GSTIN), identity of client and functioning of at the declared address, the breach thereof rests upon inference drawn from report of customs officials at New Delhi that the address in the 'goods and service tax registration' as well as in the 'import export code certificate' were not traceable as also that of the principal officers of the exporter.

7. The imputation of misconduct, insofar as regulation 10(d) of Customs Broker Licensing Regulations, 2018 is concerned, revolves around the abetment of alleged illegal activities of the exporter rather than about the advise rendered by 'customs broker' in relation to export goods. There is no specifics in that finding that the nature and content of the advice offered to the client was appropriate or that the manner in which the declaration of incorrect value, that came to be revised by reference to valuation rules, was attributable to any incorrect advice. The enquiry authority found no cause to uphold the charge of abetment which, in the context of the obligation in regulation 10(d), is superfluous. The finding of the licensing authority is bereft of any justification for the repeated narratives conforming certain facts and the relationship of those facts offering evidence of incorrect advice afforded to the client by the customs broker. The

findings, therefore, has no basis in the obligation devolving in regulation 10(d) of Customs Broker Licensing Regulations, 2018 on the customs broker.

8. Insofar as obligation to verify the correctness and antecedents of the client, which relied up upon the alleged lack of physical verification of the address is concerned, the finding in the impugned order held that

> *'16.3.3.4 I find that the addresses mentioned in the IEC and GST Registration Certificates of the same exporter are different. CB admitted before IO that this difference in address was in his knowledge but he did not find it worth making further inquiry. I find that the verification report received from the Deputy Commissioner (Gr-IV/Delta), Customs, Preventive Delhi vide letter dated 01.08.2019 disclosed that the two addresses mentioned at GST Registration and IEC of M/s. Jamilar International Private Limited were not traceable and therefore the Summons could not be delivered. Further, the two addresses of the Director of M/s. Jamilar International Private Limited were also searched, the said addresses were existing but no person with the name of the directors were found residing at those addresses. Therefore, it was observed that the M/s. Jamilar International Private Limited was not found in existence at their registered place of business and the addresses of the said exporter were fake. Therefore, I find that if the CB was diligent enough, he should have alerted himself about possibility of some fraudulent intention of the exporter and should have satisfied himself about the genuineness of the address mentioned in the IEC after verification of address by conducting independent inquiry through some prudent ways and if required,*

could conduct physical verification also but CB has completely failed in his duties.

CB stated before the IO that in present case, no physical verification of the exporters address was conducted, however, documents based verification for the address was very much done by his employees and they had verified the IEC and GST Registration certificate through online mode. The casual approach of the CB to verify the address of the exporter from documents and through online mode is not acceptable because Regulation 10(n) of CBLR, 2018 is specially prescribed to verify identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, wherein, it is very clear from the records that the CB has not verified the business premises of the exporter. Therefore, I find that CB has violated the regulation 10(n) of CBLR,2018.

From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.'

making it abundantly clear that, in the circumstances in which the exporter remained untraceable, 'customs broker' remained unable to substantiate that the antecedents had been ascertained, if not physically, at least through some reliable source of information. It would, therefore, appear that the defence of the customs broker in relation to the findings on alleged breach of obligation under regulation 10(n) is not acceptable.

9. Nonetheless, we find that the alleged misdemeanour on the part

of the exporter was limited to the claim for ‘integrated tax’ as refund. Breach of provisions of Customs Act, 1962 has been alleged against customs broker solely on re-assessed value of goods already exported. We are unable to ascertain from the records as to the manner in which refund of ‘integrated tax’ would be subject to assessment under section 17 of Customs Act, 1962 inasmuch as the refund would be just as much as had been discharged on the goods. There is nothing on record to indicate that the said ‘integrated tax’ had not been discharged by the exporter or that the customs broker had anything to do with either insufficient payment of integrated tax or was cognizant of such deficiency on the part of the exporter.

10. In these circumstances, revoking of licence and forfeiture of security deposit under regulation 14 of Customs Broker Licensing Regulations, 2018 is disproportionately severe. Consequently, the ends of justice would be met by not interfering with the penalty imposed on the appellant herein which, in any case, is beyond the scope of appeal before the Tribunal. Accordingly, we set side the revocation of licence and forfeiture of security deposit to modify the impugned order to such extend.

(Order pronounced in the open court on 05/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*