CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87484 OF 2024

[Arising out of Order-in-Original No: 23/CAC/PCC(G)/SJ/CBS-Adj dated 10th July 2024 passed by the Principal Commissioner of Customs (General), Mumbai.]

Shivam Clearing Agency Mumbai Pvt Ltd
06/304, Ozone Valley, Parsik Nagar
Old Mumbai Pune Road, Kalwa (West), Thane -400 605 … ***Appellant***

versus

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

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri Dinesh Nahal, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85014/2026

DATE OF HEARING: 19/08/2025
DATE OF DECISION: 09/01/2026

PER: C J MATHEW

M/s Shivam Clearing Agency Mumbai Pvt Ltd, holder of customs broker licence no. 11/1044), who had been was proceeded against and in accordance with the powers under regulation 17 of Customs Brokers Licensing Regulations, 2018, only to have their licence revoked and security deposit forfeited while, at the same time, imposed with penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018 in order[1] of Principal Commissioner of Customs (General), Mumbai. It would appear that the confirmation of the charges of having breached regulation 10(d) and 10(e) of Customs Brokers Licensing Regulations, 2018, with breach of regulation 10(m) held as not proved, on the finding that the appellant herein had facilitated clearance of six, out of 49, shipping bills pertaining to M/s Hasu Impex in which goods were allegedly overvalued to avail ineligible drawback, was held to suffice for all the possible detriments being fastened on them. The licensing authority has rendered finding that

> *'6. Discussion and Findings:-*
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> *I have gone through the record of the case, offence report dated 15.11.2022, the Show Cause Notice dated 29.03.2023, and Inquiry Report dated 08.03.2024 Oral and written submission of CV dated 05.06.2024 presented during personal hearing.*
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> *The Inquiry Officer vide inquiry report dated 08.03.2024 held the charges of violation of Regulation 10(d) & 10(e) of the CBLR, 2018 as 'proved' and violation of Regulation 10(m) as 'Not Proved'.*

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[1] [order-in-original no. 23/CAC/PCC(G)/SJ/CBS-Adj dated 10th July 2024]

a. From the offence report, I find that exporter firm M/s. Hasu Impex procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the over-pricing of the goods. During the period from 2012-2016 the exporter made total exports of 49 shipping bills and availed total drawback of Rs. 1,23,983/- by way of overvaluation. Out of the said 49 consignments/Shipping Bills of the said exporter, Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt Ltd had facilitated clearance of 06 consignments/shipping bills.

For brevity, I refrain from reproducing the brief facts of the case in details as the same has already been discussed above. I, now, examine the charges in the SCN sequentially.'

2. Learned Consultant appearing for the appellant submitted that the appellant had no role in procurement of over-invoiced goods or in over invoicing of the goods and nor in the processing for sanction of drawback based on invoices furnished by the exporter. It was further contended that the entire case against several customs brokers related to sanction of mere ₹1,23,983 as drawback on 49 shipping bills filed between the period from 2012 to 2016 with the appellant themselves allegedly handling six of these consignments. He further submitted that out of the six, four were filed without claim for drawback and the two shipping bills involved claim only of ₹ 24,961 rendering the entire proceedings to have had the outcome of disproportionate detriment.

3. Learned Consultant further submitted that the proceedings were flawed inasmuch the time-lines prescribed in Customs Brokers

Licensing Regulations, 2018 had not been complied with and for no fault of the appellant. Furthermore, he submitted that an identical issue had been dealt with by the Tribunal in *Palak Logistics Private Ltd v. Principal Commissioner of Customs (General), Mumbai*, final order[2] disposing off appeal[3] against orders[4] [5] of Principal Commissioner of Customs (General), Mumbai.

4. According to Learned Authorized Representative, the submissions made by Learned Consultant were not tenable as the Hon'ble High Court of Bombay in *Principal Commissioner of Customs (General), Mumbai v. Unison Clearing P Ltd [2018 (361) ELT 321 (Bom.)]* had held that proceedings are vitiated for delay in completion unless irreparable prejudice was demonstrated. According to him the customs broker was not a mere agent but held a position of trust requiring strict adherence to obligations referred to in regulation 10 of Customs Brokers Licensing Regulations, 2018.

5. It is seen that revocation of licence, forfeiture of security deposit and imposition of penalty had been founded on the alleged breach of regulation 10(d) and 10(e) of Customs Brokers Licensing Regulations, 2018. It is also seen that the issue pertains to alleged overvaluation of export cargo with intend to claim ineligible drawback. As pointed out

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[2] [final order no. A/85778-85779/2025 dated 7th May 2025]
[3] [customs appeal no. 86934 & 86935 of 2024]
[4] [no. 08/CAC/PCC(G)/SJ/CBS-Adj dated 02nd May 2024]
[5] [no. 11/CAC/PCC(G)/SJ/CBS-Adj dated 24th May 2024]

by Learned Consultant, the Tribunal in *re Palak Logistics Private Ltd* had followed the decision of the Tribunal, in *John K Mathew v. Principal Commissioner of Customs (General), Mumbai* by final order[6] disposing off appeal[7] against order[8] of Principal Commissioner of Customs (General), Mumbai wherein it had been held that

> *'2. M/s Beejay Clearing & Forwarding Agency, holder of 'customs broker' licence no. 11/707, was one among the many that came under scrutiny in investigation of value of shipments undertaken by several exporters who had allegedly secured 'drawback' in excess of eligibility by furnishing unconnected invoices with inflated prices obtained from 'bogus firms' of one Suhel Ansari. Insofar as the impugned proceeding is concerned, it was the dealings of the appellant with M/s Basar Jewels Pvt Ltd, on whose behalf export of goods during 2012-16 involving claim of ₹ 2,83,000 as drawback against six shipping bills had been handled, that triggered order of suspension on 30th December 2022 under regulation 16 of Customs Broker Licencing Regulations, 2018 which was, however, revoked after post-decisional hearing by order of 10th March 2023 though, oddly, only after issue of notice under regulation 17 of Customs Broker Licencing Regulations, 2018 on 9th March 2023 proposing action under regulation 14 and regulation 18 of Customs Broker Licencing Regulations, 2018. The lack of clarity on the part of the licencing authority about the client in connection with which breach of obligations on the part of 'customs broker' occurred does place the integrity of the final disposal now impugned before us in jeopardy and the strategy to rescue it from the brink by revocation of suspension in anticipation of challenge to*

[6] [final order no. 85750/2024 dated 5th August 2024]
[7] [customs appeal no. 87232 of 2023]
[8] [order-in-original no. 40/CAC/PCC(G)/SJ/CBS-Adj dated 27th September 2023]

proceedings does not, from manifest lack of clarity which is anathema to the seriousness of recourse to detriment empowered by the Customs Broker Licencing Regulations, 2018, advance the integrity of the process. The notice culminating in the impugned order is all about exports effected by M/s World Wide Export and the inference in the show cause notice from

> *'13. From the investigation it appears that it is unlikely that CB M/s Beejay Clearing and forwarding agency was unaware that he was receiving goods based on fictitious bills. Had the CB seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible.*
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> *Therefore, under the fact and circumstances, the CB actively connived with exporters in claiming undue drawback and over valuing the export goods and mis-declaring in Shipping Bill,….'*

that the appellant herein was liable to be charged with breach of obligation in regulation 10(d), regulation 10(e), regulation 10(f), regulation 10(k) and regulation 10(n) of Customs Broker Licencing Regulations, 2018 has only brevity to commend it as statement of imputation of misconduct and by, thereby, also leaving it to the designated 'inquiry authority' to fill in the gaps, is contrary to the pre-requisite of proceedings that, unlike recoveries of duties of customs which are episodic, prejudice continued practice of a profession. There is no allegation of 'non-export' of goods or 'misdescription of goods' or even that taxes indicated in the invoices had not been paid.

3. The foundation of the proceedings, in which the appellant has ostensibly been fastened with such overwhelming role as to warrant termination of licence to practice a profession, is the handling of three shipping bills out of thirty one consignments involving claim of ₹3,31,000 as drawback on 'imitation jewellery' exported by M/s World Wide Export between 2012 and 2017 that relies upon statements of M/s Moize Ahmed Ali Angoothiwala, partner in the exporting entity, on modus operandi, the report from Consulate General of India (CGI), Dubai that Federal Customs

Authority of United Arab Emirates intimated clearances there at lower values on import and the statement of one Suryabhan Eknath Dhurphate, proprietor of M/s Sanket Overseas and 'logistics provider', that cost and expense of export was, generally, only 35% of drawback with 65% available to them and exporter. The exporter whose consignments were handled by the appellant admitted to procuring goods from local 'karigars' against 'kaccha bills' for which invoice and packing bills were prepared and forwarded to 'custom broker' and 'forwarding agency' for completion of customs formalities but denied any relationship with the said Suhel Ansari as the said invoices had been received only indirectly through others while affirming that no one had physically verified their address. From these, it would appear that the cornerstone of the case against the appellant are reports portraying overvaluation and of non-verification of address of exporter. That the appellant was not questioned about its role is sought to be justified with the assertion that

> *'8. Statements of CB M/s Beejay Clearing and Forwarding Agency could not be recorded as they have not presented themselves for recording of statements despite summons issued to them.'*

which has ring of incredulity considering that, while the notice issued on 9th March 2023 relied upon statement of exporter on 9th March 2022 and statements of 2015 and 2016 from others and upon report of 8th March 2018 from Dubai to Directorate of Revenue Intelligence, the suspension in the inter regnum took note of a testimony during investigations and also that the order revoking suspension noted representation by counsel on 24th February 2023 which could, in circumstances set out supra in the notice, only be a gesture of undeserving magnanimity towards a 'custom broker' who, reportedly, flouted summons to appear in investigation and against whom one of the charges in the notice is, though unconnectedly, said to arise from this very refusal to join investigation. The jeopardy to the proceedings, from not *connecting those 'factual dots' in the proceedings of inquiry and before the licencing authority, appears to have been underestimated rather glaringly.*

4. Normally, the offence in import or export leading to proceedings for termination of licence to practice a profession are not scrutinized by us but here a different set of circumstances presents itself. Exports of 2012-17 are impugned in investigations that was, initially, found to warrant recourse to 'suspension' in 2022 and in which investigations had been underway since 2015. The allegation of overvaluation is not so critical to these proceedings as it would have been in adjudication for confiscability of offending goods, denial of drawback arising therefrom and imposing of fiscal penalty but the other, and even more fundamental, allegation of export goods having been procured against invoices of persons other than suppliers as being, purportedly, contrary to rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 without bringing the normative into focus – essential for determination of breach – has made it a matter of concern to us. There is neither reference to the requirement of such invoice of supplier for processing of claim for drawback or of any machinery provision in chapter X of Customs Act, 1962 and any Rules framed by Central Government under delegated authority therein and nor, indeed, of defiant disregard of any direction to furnish such at the time of export. It would appear to us that the appellant was sought to be fastened with act of omission and commission in relation to a provision in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 that intended empowering of the Central Government to devise a schedule of rates of drawback in lieu of engaging in computation of drawback on each incident of export and, in the framing of such delegation, emplacing caveat on eligibility of products manufactured from use of exempted goods. This is evident from the contents of the impugned rule which has been only *selectively extracted to afford the impression that responsibility devolved on the 'customs broker' in relation to the impugned consignment. No evidence is forthcoming that goods procured by a merchant exporter are ineligible for drawback or that only goods exported from factory of manufacture are eligible for drawback; such inference does horrible violence to the statutorily enacted contractual obligation of the State to reimburse drawback [See final order no. 86108/2020 dated 16th December 2020 of Tribunal in Haldirams Foods International Pvt Ltd] and to the delegated authority to draw up a 'schedule of rates of drawback' for sanction of claims without researching each. The framework of Central Excise Act, 1944 does not brook assumption for its own enforcement, let alone a process under Customs Act, 1962, that goods available in the marketplace are likely to have been cleared, or imported, without payment of appropriate duty; the onus devolves on the investigation agency to establish that duties had been evaded on the impugned goods and not by mere presumptive, and circumstantially contrived, supposition from a 'free floating' allegation.*

5. It is against this backdrop of insufficiency of imputation of breach of obligation, of contradiction in factual narration and of unsupported inference of nature of the impugned provision of Customs, Central Excise and Service Tax Drawback Rules, 1995 that the submissions of both sides must be examined. Even so, we may make bold enough to say that the benefit, even if 'undue', derived by the exporter is not of such gravitas as to merit revocation of licence to practice a profession and, more especially, when the licencing authority itself appears to have discountenanced proper conjecture of the provision of law that supposedly made the impugned goods offending. We have heard Learned Counsel for appellant and Learned Authorised Representative at length. While the sum and substance of the arguments of Learned Authorised Representative rested upon the *foundations upon which the inquiry officer held the charges as proved and, thereafter, relied upon by the licencing authority in the impugned order, a few submissions of Learned Counsel are particularly significant. It was intimated by him that the appellant had handled only three out of the thirty one consignments and that none of these were exports against claim for drawback. It was submitted by him that they had not been summoned at any stage in connection with the three shipping bills and that, despite the unduly long elapse of time since the consignments had been handled, they were still able to furnish some records to the investigators. It was also pointed out that there was no allegation of having handled the consignments without authorization and that the finding of not having verified the operational details of exporter is based on assumptions.*

6. We find that, insofar as the charges are concerned, the impugned order has put together unrelated facts and rendered findings that, consequently, are illogical and untenable. It is seen that the charge of not having advised the client to comply with Customs Act, 1962 and rules and regulations thereof is not founded on any allegation that advice sought had not been rendered and nor is there an allegation that 'customs broker' is expected to explain the entirety of the law to the client; either the allegation is vague or the obligation is vague with neither contingency furthering the case against the appellant. It is, probably, owing to this conceptual commotion that the licencing authority has proceeded to uphold the charge on the supposition that exporter could not have executed overvalued exports without collusion from the appellant. That bridging of supposition with breach of obligation is too far-fetched to accept. The easiest of misdeclaration to undertake is overvaluation of export goods for the requirement to repatriate export proceeds confers advantage of presumption of correctness of contracted value combined with incomparability of local prices; it would appear that unnecessary *premium has been placed on the need of a fellow conspirator for such overvaluation to succeed. The conclusion in the impugned order has nothing to do with obligation and is also not founded on any fact on record. The charge of having breached regulation 10(d) of Customs Broker Licencing Regulations, 2018 has been inappropriately held to be proved.*

7. Likewise, it is seen that allegation of breach of obligation to exercise due diligence in ascertainment of correctness of any information furnished to the client is not founded on any information sought for by the client and not from any accusation of the client that appellant had misinformed them. Instead we find a sweeping presumption that it was owing solely to having failed to ascertain correctness of information that client was emboldened to set out in this act of overvaluation. The licencing authority also appears to have misconstrued the nature of the obligation which is not about dissemination of incorrect information but of failure to ascertain correctness of information which must, necessarily, be built upon information given, either of own volition or on request of client, that was not only not incorrect but communicated without taking steps to ascertain correctness thereof. The notice, inquiry report and impugned order are markedly lacking in such determination. Even as saving grace, there is no factual narration of any information that led to alleged overvaluation. Thus it is that regulation 10(e) of Customs Broker Licencing Regulations, 2018 has been incorrectly held as proved.

8. The alleged breach of obligation to forbear from withholding information contained in any order, instruction or public notice from a client who is entitled to receive them has been established with the finding that details of local procurement said to be prescribed in circular no. 16/2009-Cus dated 25th May 2009 was in breach; however, this fact had not been set out in the notice issued to appellant. There is also no reference to the said circular *in the report of the inquiry officer. It would, thus, appear that the inspiration which prompted the licencing authority to refer to this mandate was not tested by offering opportunity at any stage to explain irrelevance of its contents to 'free shipping bills' filed for exports by the appellant or to explain that it had indeed been provided. This is tantamount to introduction of evidence after conclusion of all proceedings in which appellant had participated and is, this, untenable basis for upholding the charge of having breached regulation 10(f) of Customs Broker Licencing Regulations, 2018.*

9. The allegation that the appellant had failed to maintain records and accounts has been upheld on the findings that appellant had not responded to summons and had failed to furnish details called for. The contention of appellant right from the beginning had been that no summons had even been issued to them in connection with investigation into the exports of M/s World Wide Export and, at no stage, did the inquiry officer or the licencing authority ever counter this response with any record to the contrary. Indeed, as we have noted supra, it is moot if the suspension would have been revoked in such circumstances. In any case, this obligation does not pertain to response to summons or join in investigations. Moreover, as the appellant has pointed out, the regulation is studiously silent on the period for which the records are required to be preserved and the claim of the appellant that records were trashed has not been countered with any instruction requiring preservation beyond reasonable period. Furthermore, we do not find reference to any stipulation by the officer designated for the purpose in the said regulation which should have been the foundation of this allegation and it was merely the inability of the exporter to furnish detailed records that has been attributed to flawed performance of obligation by the appellant. It would appear that the intent of the obligation has been incorrectly appreciated by the licencing authority; the allegation *of having breached regulation 10(k) of Customs Broker Licencing Regulations, 2018 does not sustain.*

10. It has been alleged that the appellant had failed to carry out mandated antecedent checks and verification of the client and the finding of it having been proved is founded on a statement of the exporter that such verification had not been carried out. It was incumbent on the investigation to have confronted the appellant with this accusation but no attempt was made so to do. It is also surprising that after such elapse of time, the exporter was able to recall lack of physical verification even as he was unable to recollect details of purchase channel. Not only does such selective remembrance lack verifiability but also relegates its acceptability to the periphery. In the context of limited benefits derived, and none at all in the consignments handled by the appellant, by the exporter and lack of any evidence of such negligence in the part of the appellant, we are unable to accept the conclusion of not having been diligent in antecedent verification. As we have already premised, it was much too late, and the stakes were much too little, for conducting any worthwhile investigation. To erect such a charge on such fragile foundations is sure recipe for it to fail to find favour. Thus, there is no basis for alleged contravention of regulation 10(n) of Customs Broker Licencing Regulations, 2018, as found in the impugned order, to be affirmed by us.

11. The charges of breach of regulation 10 of Customs Broker Licencing Regulations, 2018 do not sustain. There is no case that the goods had not been exported or evidence even that the impugned goods had not been manufactured out of duty paid inputs. The drawback involved in all the exports during the said period by M/s World Wide Export is not of such high order as to warrant penalties and detriments that were heaped upon them in the impugned order and those handled by the appellant were not under any claim at all. In these circumstances, we find ourselves *unable to uphold the impugned order which is set aside to allow the appeal.'*

6. It is also seen that the customs broker had represented against non-adherence to time-lines prescribed in Customs Brokers Licensing Regulations, 2018 despite which the elapse of 344 days, the gap between the commencement of proceedings by notice dated 29th March 2023 and the submission of the enquiry report, had not been dealt with in the impugned order. The Hon'ble High Court of Bombay, in *re Unison Clearing Pvt Ltd*, had held that the time-lines are mandatory in the event that the impugned order does not establish that such delay occurred at the instance of the customs broker. It would appear, from the absence of any finding on this aspect, that the delay was not on account of the appellant herein.

7. In the light of above the impugned order does not sustain and is set aside to allow the appeal.

(Order pronounced in the open court on 09/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*