

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85851 OF 2021

[Arising out of Order-in-Original CAO No: 27/CAC/CC(G)/PS/CBS(Adj) dated 14th September 2020 passed by the Principal Commissioner of Customs (General), Mumbai Zone – I.]

Sainath Clearing Agency

Flat No. 1102, 11th Floor, Rosella Building
Behind 90 Feet Road, Vallabh Baug Ext. Lane
Opp Ghugru Bar, Ghatkopar East, Mumbai 400077

... Appellant

versus

Principal Commissioner of Customs (General)

Mumbai Zone – I
New Custom House, Ballard Estate, Mumbai 400001

...Respondent

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri S B Hatangadi, 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: A / 86382/2023

DATE OF HEARING: 15/03/2023
DATE OF DECISION: 14/09/2023

PER: C J MATHEW

This appeal of M/s Sainath Clearing Agency, holder of custom broker licence no. 11/1030, stems from order¹ of Principal Commissioner of Customs (General), Mumbai revoking the said licence and forfeiting security deposit under regulation 14 of Customs Broker Licencing Regulations, 2018 while imposing penalty of ₹ 50,000 under regulation 18 of Customs Broker Licencing Regulations, 2018 on the finding that acts of omission and commission on their part, in handling bill of entry no. 5126157/08.02.2018 for imports effected by M/s Twister Enterprises, had been in breach of obligations devolving on them by regulation 10 of Customs Broker Licencing Regulations, 2018.

2. The imports were found to have been misdeclared and it was revealed during investigations that documentation for entitling import by M/s Twister Enterprises had been secured in the name of one Atul Dilip Baviskar who claimed to be a helper in a construction venture and denied any knowledge of, or wherewithal for, undertaking imports. It was also ascertained that an intermediary, one Deepak Kumar, known to his acquaintance, one Manoj Koteja, and introduced by him, had handed over the documents to, and made arrangements with, Shri Dinesh P Mehta, proprietor of the appellant-entity. Thus, the appellant was charged in notice dated 14th January 2019 with contravention of regulation 10(d), 10(e) and 10(n) of Customs Broker

¹ [CAO No: 27/CAC/CC(G)/PS/CBS(Adj) dated 14th September 2020]

Licencing Regulations, 2018 after having been placed under suspension near about six months after the impugned import. The inquiry was completed after more than eleven months of the notice and report, holding the three violations as proved, was furnished on 26th December 2019 to the licencing authority.

3. It has been noted in the impugned order that

'9.4 The Inquiry Officer further stated that the subject inquiry could not be completed within the prescribed time limit under CBLR, 2018, as the Charged CB has not attended any of the hearings though he was afforded very possible opportunity by way of hearings and from his reluctant way it appeared that CB was least bothered about the Inquiry Proceedings and shown lackadaisical approach in the subject case. Further undersigned was also deputed for Election Duty (General Election 2019) held in the month of April and May 2019. Hence any delay on the part of Inquiry officers is due to administrative compulsions.'

It is contended by Learned Counsel for appellant that every notice of hearing had been responded to; we, however, note that the appellant, in response to licencing authority, had not preferred such submission as fatal to the proceedings. Accordingly, it would appear that the appellant is, at least partially, not without responsibility too for delay in conclusion of inquiry proceedings.

4. Learned Counsel also submitted that the findings in the inquiry report are incorrect insofar as each of the alleged violations are

concerned. According to him, the presence of witnesses was essential to establishing that the charges were unfounded considering that the obligations, alleged to have been breached, are too broadly expressed for fitment with actual operation as customs broker. He also submitted that breach, if any, does not warrant extreme measures routinely resorted to by licencing authorities. We have heard Learned Authorized Representative at length.

5. The appellant has been charged with failure to advise the 'client' to comply with provisions of statutes, rules and regulations that also obliges the customs broker to bring notice of non-compliance to Deputy Commissioner of Customs, failure to exercise due diligence in ascertaining correctness of information which is imparted to the 'client' with reference to work of clearance and failure to verify correctness of specified details, identity of 'client' and place of functioning.

6. The finding against the appellant on the last of the charges is rooted in his statement testifying that one Deepak Kumar alone was the person he had dealt with and which, taken with lack of any specific detail of having carried out the necessary verifications, was held as sufficing to establish the charge as proved. Additionally, the first and second charges were also held as established on the basis of the very same set of facts and circumstances of non-verification.

7. There should have been a statement of imputation of facts which would lead to the conclusion that advice had not been rendered or wrongly rendered to a client or that the appellant was aware of non-compliance, if any, with such advice. This is lacking in the record of proceedings. There is also no record of any evidence to suggest that the appellant had imparted incorrect information, with reference to cargo clearance, to the 'client' during the course of handling the impugned goods.

8. The expression 'client' has been deployed rather loosely in Customs Broker Licencing Regulations, 2018. We do not see any reason to conclude that 'client' has to be the owner or consignee of the goods as such person may also well be nominee of the importer including employees. In any case, the rendering of advice to a 'client' or correctness of information pertaining to clearance for a 'client' is a matter of hearsay and the investigators have had the advantage of obtaining the purported version of the 'client' which, in absence of challenge, may lack validation. The notice issued to the appellant relied on statements of persons and, thereby, rendering them witnesses in support of the charge; lack of cross-examination negates the acceptability of contents of the statements which no evidence of efforts taken to secure presence of witnesses can overcome. That, probably, accounts for reliance on one set of facts to conclude that all three charges stood proved even though each obligation in regulation

10 is required to stand on its own independent set of facts; there would, otherwise, be no need to enumerate those separately.

9. The impugned goods were found to be offending for having been misdeclared. There is no allegation that the appellant was either a party to it or was aware of any transaction between shipper and client in furtherance of such intent. A case can hardly be made out that a 'customs broker' would, in normal course of business, be privy to misdeclaration and may, thereby, have not given proper advice or correct information to the client. It is, therefore, to be presumed, unless established to the contrary, that proper advice has been rendered to a client and that correct information has been imparted; it cannot, contrarily, be presumed upon subsequent examination of goods and hindsight that advice had not been properly rendered and that information imparted had not been verified for correctness. Even that is not the allegation here but that the importer had not been transacted with which relies on the admitted statement of the appellant which, however, did not foray into tendering of advice or verification of information furnished.

10. A tendency to be less than meticulous in drafting of charges is evident here and proceedings do acquire the characteristic of trivializing the institution of 'custom broker'; if they are to perform the vital role expected of them, resort to Custom Broker Licencing

Regulations, 2018 has to be deliberated upon by licencing authorities in the context of each incident of breach of obligation. Disciplining of 'customs broker' is not be entered into lightly nor receded from hastily.

11. That the appellant had not interacted with the proprietor of the importing entity is on record; consequently, it would not be wrong to conclude that the several documents of identity and location had not been verified. Though that, of itself, may not be taken as having contributed to misdeclaration, it is, nonetheless, a breach of obligation.

12. In the circumstances, it would be appropriate to modify the consequential detriment to bear proportion to the established breach. Accordingly, the revocation of licence and forfeiture of security deposit is set aside. With the penalty of ₹ 50,000 sustained, we dispose off the appeal.

(Order pronounced in the open court on 14/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)