

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

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 87041 OF 2022**

[Arising out of Order-in-Original No. 30/2022-23 dated 20<sup>th</sup> September 2022  
passed by Commissioner of Customs (General), Mumbai Zone-I.]

**Daroowala Bros and Company**

785 A Ready Money Building, 1<sup>st</sup> Floor  
Mancherji Joshi Road, Dadar (E), Mumbai-400014.

*...Appellant*

*versus*

**Commissioner of Customs (General)**

New Customs House, Ballard Estate,  
Mumbai-400001.

*...Respondent*

APPEARANCE:

Mr Ashwini Kumar, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR S K MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**FINAL ORDER NO: A/ 86249/2022**

DATE OF HEARING: 07/12/2022

DATE OF DECISION: 23/12/2022

PER: C J MATHEW

Aggrieved by suspension of their customs broker license (no.  
11/693) by order no. 30/2022-23 dated 20<sup>th</sup> September 2022 under

regulation 16(2) of Customs Broker Licensing Regulations, 2018 for continuing the suspension *vide* order no. 25/2022-23 dated 30<sup>th</sup> August 2022 following notice of post-decisional hearing, ostensibly in connection with alleged substitution of samples drawn from consignment imported against bill of entry no. 7869623/15.03.2022, M/s Daroowalla Bros & Company challenges the propriety of the deprivation in this appeal. That the appellant had filed the bill of entry at Jawaharlal Nehru Custom House (JNCH) for clearance of 44553 metres of ‘PVC coated fabric width 54”’ packed in 917 rolls valued at US \$ 19,603.32 and that test report of Textile Committee, Nhava Sheva of sample received on 27<sup>th</sup> April 2022 indicated the goods to be ‘polyurethane coated (PUC) fabric’ is common ground.

2. Based on offence report dated 23<sup>rd</sup> June 2022, citing the discrepancy in test of samples, drawn on 24<sup>th</sup> March 2022 and forwarded by customs authorities to the Textile Committee, reported as conforming to the declaration which was at variance with the report of test on second set of samples that could not be explained away as representative of any other article in the impugned consignment as well as contents of statements recorded under section 108 of Customs Act, 1962 from persons concerned with the first drawal, alleging substitution of samples with fraudulent intent involving an employee of the appellant, the licence was suspended under the authority of regulation 16 of Customs Broker Licensing

Regulations, 2018 and, thereafter, ordered to be continued under suspension.

3. Denying any role in, or even motive for, such substitution, it was contended by Learned Counsel for the appellant that the inordinate delay between alleged commission of the offending act and the suspension was clearly demonstrative of absence of circumstantial immediacy empowering recourse to regulation 16 of Customs Broker Licensing Regulations, 2018 for which the decision of the Tribunal in *International Shipping Agency v. Commissioner of Customs (General), Mumbai [2006 (196) ELT 439 (Tri-Mum)]* and in *P Cawasji & Co v. Commissioner of Customs (General), Mumbai [2018 (364) ELT 871 (Tri-Mumbai)]* were relied upon. Citing the decision of the Tribunal in *G & K Shipping Pvt Ltd v. Commissioner of Customs (General), Mumbai [2005 (192) ELT 251 (Tri-Mumbai)]*, it was also contended that failure to furnish the ‘offence report’ despite request having been made on 1<sup>st</sup> September 2022 had denied them their right to effective defence.

4. It is further contended by him that samples had been drawn without notice to the importer or the appellant and that presence of an employee of theirs not being in pursuance of such notice but owing to peremptory and informal instruction by customs officials does not sit well with the allegation leveled now against the appellant which, to all

intents and purposes, has been insinuated for making them the ‘fall guy’ in the episode. Relying upon the decisions of the Tribunal in *Sainath Clearing Agency v. Commissioner of Customs (General)*, *Mumbai [2011 (269) ELT 106 (Tri-Mumbai)]* and of the Hon’ble High Court of Delhi in *Exim Cargo Services v. Commissioner of Customs (General) [2019 (368) ELT 1024 (Del)]*, Learned Counsel submitted that the appellant could not be held responsible for any act on the part of employees that was beyond the terms of employment. It was further submitted that their role had not been investigated before suspension and that the phrasing of order of suspension was suggestive of potential for prejudice that would impede impartial inquiry and decision on future detriment in proceedings that must, inevitably, follow. It was also argued that the case law relied upon in the impugned order was not applicable in the facts and circumstances of the present dispute.

5. According to Learned Authorised Representative, it is on record that the duplicate of the tampered sample at Centralised Sampling Cell was found to contain a cut piece of ‘coloured fabric’ that did not match any of the rolls found upon examination of the container. It was also contended that the statements of four individuals, including that of an employee claiming to have acted upon instructions of the Director of the broker company for clearance of the said goods for which relevant documents had been handed over, sufficed to establish

that the said employee was present during the drawal, and handling of the first sample in conjunction with the person concerned at CFS Navkar Logistics. Relying upon several facts, he contended that the suspension of the license was not guided by expediency and that continuation was necessary for ensuring that such fraudulent activities are not repeated.

6. It would not be appropriate for us, at this stage, to dwell upon the facts cited by both sides as those are relevant to the proceedings designed to follow suspension of licenses. Nor would it be appropriate for us to dwell on decisions cited by Learned Counsel except as directly pertain to suspension of licenses in similar circumstances. We entertain no doubt that suspension is an *ad interim* measure and, prompted by facts peculiar to alleged breach of obligation devolving upon customs brokers, brooking no delay in separating the broker from the workplace. As suspension is but a preliminary, and merely tentative, signification of intent to saddle detriment sanctioned by the Regulations, our interference is warranted only upon breach of procedure or non-observance of principles of natural justice leading up to it or in circumstances demonstrating lack of empowerment at the threshold itself.

7. It has been contended by Learned Counsel that the appellant had not been furnished with the 'offence report' that triggered the

suspension and, thereby, deprived them of opportunity for effective defence. This submission does not merit our consideration as suspension does not have to be preceded by, or to flow from, ‘offence report’ which is, also, of as little significance in consequent proceedings too save as a benchmark for determining elapse of time prescribed for adherence at various stages. The contention that suspension was founded upon surmises and not upon any investigated evidence is, in our opinion, not of relevance to this ‘curtain-raiser’ in proceedings initiated against a customs broker; those are enumerations and narrations that may be appropriately expected in charges framed for conducting inquiry in accordance with regulation 17 of Customs Broker Licencing Regulations, 2018.

8. Conscious of the limited sphere for appellate intervention in disputes such as these, it would be appropriate for us to examine the empowerment for

*‘16. Suspension of license.—(1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:*

*Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.*

*(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:*

*Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.'*

in Customs Broker Licensing Regulations, 2018 and, more particularly, in the context of admitted presence of an employee of the appellant at the time of drawal of sample that was allegedly tampered with, the enabling framework that permits recourse to it.

9. From the statutory prescription, it is abundantly clear that there is no procedural fetter on ordering suspension of licence except for determination of immediacy when enquiry is pending or contemplated against a customs broker; however, continuation of suspension will be maintainable only upon affording opportunity for 'post-decisional' hearing in compliance thereof with stipulated timelines. The mandate of process is, invariably, observed in letter but, as it happens all too often, disregarding the harmonious construct of the provision as a whole: that, if inquiry has been only contemplated at the time of suspension, continuation of suspension is contingent upon

crystallizing intention to take recourse to regulation 17 of Customs Broker Licencing Regulations, 2018 and that, either during pendency or mere contemplation of enquiry, the consequence of non-suspension outweighs deprivation caused by suspension. Unless the two are demonstratively evident, suspension will have traversed the circumscribing intended by law.

10. The latitude, and restraint, inherent in the design of regulation 16 of Customs Broker Licencing Regulations, 2018 thus revealed upon careful perusal is made more conspicuous by the appending of the *non obstante* clause: suspension is not a necessary pre-requisite for initiation of inquiry with intent to revoke licence or impose penalty and, while intention so to do has no bearing on suspension, decision to proceed with enquiry is inevitable precursor for continuation of suspension. It is the latter that we are concerned with in resolving this dispute.

11. The allegation of substitution of samples has not attained final determination as fact and there is no evidence, as yet, linking the appellant to the allegation except by way of vicarious responsibility for misconduct of employee. It may not appear unreasonable for the appellant, as licensee, to be considered as accountable for acts of omission and commission on the part of its employees. Such artlessness, however, obscures the statutory confines of the vocation



that may not be entirely in congruity with common understanding which subsumes the niche occupied by such professional intermediary within the logistics chain of international trade. 'Customs broker', defined as

*'(2) a person licenced under these regulations to act as an agent on behalf of the importer or exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station including audit;'*

in regulation 2 of Customs Broker Licencing Regulations, 2018, serves not just to restrict activities but also the workspace insofar as regulation of brokerage is concerned without impinging upon delivery of other services in the channel by the same entity.

12. Customs Broker Licencing Regulations, 2018 is sanctified by the empowering enablement in section 146 of Customs Act, 1962 that provides for statutory instrument comprehensive enough for administering the life-cycle of customs brokerage in entirety; the existence as an entity in the scheme of delivery in cross-border transaction in goods is not dependent on existence as a licensee who, owing to the intended specificity of the Regulations, is confined to the restricted framework therein. To such extent is the intrusive superintendence that no 'employee' of a broker has existence but upon acknowledgement by the authority designated for each class of

persons in regulation 13 of Customs Broker Licencing Regulations, 2018. Every person in a master-servant relationship with the person in possession of licence under the Regulations has no standing as employee except by such acknowledgement. It is only in this circumscribed equation of 'employee' and 'customs broker' under the Regulation that vicarious responsibility of the licensee for acts of omission and commission may be triggered for initiation of proceedings under regulation 17 of Customs Broker Licencing Regulations, 2018. Fastening of that responsibility merely from remuneration payable by the entity – proprietorship, partnership or company – to an allegedly derelict individual would transgress the oversight permitted to the licencing authority under the Regulations.

13. The involvement of an individual, remunerated by the appellant, in alleged substitution of samples drawn by customs authorities was the cause for suspension. The continuation of suspension in the impugned order, sought to be justified by relying on confessional statements, does not go beyond that allegation at this stage. The individual concerned does not possess any status under the Regulations and act of his, in any capacity whatsoever, is beyond the scope of retribution under the Regulations. To foist deprivation of livelihood as licensee merely on inference, lacking legal foundation and devoid of procedural sanctity, is improper and our countenance of such will be approval of misadventure.

14. For the above reason, the ends of justice can be met only by restoration of the license to the appellant while making it abundantly clear that this restoration will not have any impact on further investigations or further proceedings under the appropriate provisions in Customs Broker Licensing Regulations, 2018 that lies within the empowerment conferred on the licencing authority upon completion of investigation.

15. Accordingly, we allow the appeal and direct that the embargo on operations of the license be lifted forthwith.

*(Order pronounced in the open court on 23/12/2022)*

**(S K MOHANTY)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***

*\*/as*