

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Custom Appeal No. 85012 of 2022

(Arising out of Order-in-Original No. 96/CAC/PCC(G)/SJ/CBS(Adj)
dated 11.10.2021 passed by the Principal Commissioner of Customs
(Gen), Mumbai Zone I)

M/s. Sonak Shipping Services
C 1101 Marathon Cosmos
LBS Marg, Mulund (W)
Mumbai

.....Appellant

Vs.

Commissioner of Customs, Mumbai General
New Custom House,
Ballard Estate,
Mumbai

.....Respondent

APPEARANCE:

Shri H.G. Dharmadhikari, Advocate for the appellant
Shri Ram Kumar, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Ajay Sharma, Member (Judicial)

FINAL ORDER No: **A/86237 / 2022**

DATE OF HEARING : 30.08.2022
DATE OF DECISION : 22.12.2022

PER: C J MATHEW

This appeal of M/s Sonak Shipping Services, holder of licence
no. 11/2360, lies against revocation of licence under regulation 14

besides the forfeiture of security deposit and imposition of penalty of ₹50,000/- under regulation 18 of Customs Broker Licensing Regulation, 2018.

2. The genesis of the proceedings under Customs Broker Licensing Regulation, 2018 is the clearance of goods imported by their clients, M/s Pratibha Traders, said to be ‘needles’ as per bill of entry no. 7919184/05.09.2018 but allegedly comprising goods that are subject to ‘anti-dumping duty’ leviable under Customs Tariff Act, 1975. The licensing authority, after completing the process stipulated in Customs Broker Licensing Regulation, 2018 and based on enquiry report dated 3rd May 2021 recording breach of regulation 10(a), 10(b), 10(d), 10(e), 10(m) and 10(n) of Customs Broker Licensing Regulation, 2018, found it appropriate to impose the said detriments now impugned before us.

3. Learned Counsel for appellant submits that the sole ground for initiation of proceedings was the non-ascertainment of the premises from which the importer operated and unwonted reliance placed on an intermediary who allegedly misused the Import Export Code (IEC) of another entity for import of branded goods, including by suppressing that ‘needles intended for sewing machines’ contravened of the ‘intellectual property rights’ regime and evaded ‘anti-dumping

duty', besides misdeclaration of value of other goods concealed therein.

4. According to Learned Counsel for appellant, there is no requirement for 'customs broker' to visit the premises of clients and that, from the nature of the offence alleged to have been committed by importer, a visit could not have forestalled the *modus* resorted to by importer. Furthermore, Learned Counsel contends that the timelines in Customs Broker Licensing Regulation, 2018 had been observed in its breach.

5. Learned Authorised Representative submits that the proceedings were commenced, and concluded, during the recent pandemic and hence non-compliance with the timelines stipulated in the Regulation was justifiable. He also submitted that the issue is not related to mere unfamiliarity with the premises of the importer but that the middleman, under the guise of representing the Import Export Code (IEC) holder who had nothing to do with the goods, could, thereby, indulge in the evasion.

6. We find that the appellant had not verified the premises of the importer in person. Undoubtedly, there is no prescription, in procedure or instruction, that the premises of the client should be visited in person or verified appropriately. Norms for familiarity with the background of client are mandated and it is the contention of the

Learned Counsel that these were conformed to. It is also seen that the enquiry proceedings restricted itself to the technical aspect of the allegation without endeavouring to ascertain if acts of omission or commission as 'custom broker' had, in fact, contributed to the act of smuggling. The appellant has, at the same time, been unable to evince due to discharge of obligation.

7. The licensing authority has revoked the licence of the appellant herein besides forfeiting the security deposit and imposing further penalty. Considering the nature of lapse on the part of the 'customs broker', the ends of justice would be met by setting aside the revocation while allowing the forfeiture of security deposit and imposition of penalty to sustain.

8. Appeal is accordingly disposed off.

(Order pronounced in open court on 22.12.2022)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)