



प्रधान मुख्य सीमा शुल्क आयुक्त कार्यालय, मुंबईअंचल-II
**Office of the Principal Chief Commissioner of Customs
 Mumbai Customs Zone-II**
 जवाहरलाल नेहरू सीमाशुल्क भवन
JAWAHARLAL NEHRU CUSTOM HOUSE
 पोस्ट : शेवा, तालुका : उरण, जिला रायगड, महाराष्ट्र-400707
 Post: Sheva, Taluka: Uran, District: Raigad, Maharashtra-
 400707
 दूरभाष/Tel No.: 022-27244736 फॅक्स/Fax 27242402-022:
 Email: ccu-cusmum2@nic.in



Date : 23.10.2024

ADVISORY No. 02/ 2024 JNCH

Sub: Implicating Customs Brokers as co-noticees in cases involving interpretative disputes - Reg.

An advisory No. 01/2022-JNCH dated 02.12.2022 was issued on the subject - Implication of Customs Brokers in Show Cause Notices involving interpretation of statute, whereby it was advised that routinely proposing penal provisions under the Customs Act, 1962 against Customs Brokers by Audit Commissionerate in matters involving interpretation of statute should be avoided. Only when any specific act of omission or commission on the part of the Customs Broker is found during Audit, which caused violation of any provision of the Customs Act, 1962, a proposal should be made for penal action against the Customs Broker, bringing out clearly their such acts and omissions. Generally, such facts are unlikely to be revealed during Audit, as the scope of audit is limited.

2. Thereafter, vide CCO, JNCH letter No. CCCO/LGL/MISC/277/2022-ADMN-O/o CC-CUS-ZONE-II-NHAVA SHEVA dated 20.02.2023, it was impressed upon the Adjudicating Authorities that while adjudicating the Show Cause Notices issued in the past, mainly prior to the issuance of Advisory No. 01/2022 dated 02.12.2022; wherein penal provisions had been invoked against the Customs Brokers in a routine manner in the cases involving mere interpretation of statute based on Audit Reports, the said Advisory should be kept in mind, alongwith the ratio of the decisions of the higher judicial Forums. The 2022 judgment of the Hon'ble CESTAT in the case of M/s Suji Kuriakose V/s Commissioner of Customs was specifically referred in the said letter.

3. In the last two (02) years also, a number of judgments have been passed by the higher judicial forums re-iterating that in cases where there is no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, penalty cannot be imposed on the Customs Brokers.

4. The CBIC has also taken note of the practices in the field formations and issued an Instruction No. 24/2023 dated 18.07.2023 directing that Personal Hearing should be granted before License of Customs Broker is suspended under the Customs Broker Licensing Regulations, 2018. Similarly, an Instruction No. 20/2024 dated 03.09.2024 has recently been issued by CBIC directing that implicating Customs Brokers as co-

noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigation authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962. The above instructions issued by CBIC clearly convey the importance of taking a judicious view in the matters involving Customs Brokers, who are crucial stakeholders in the customs clearance process.

5. In the above background, the Orders-in-Original passed by various Adjudicating Authorities of JNCH in recent months were scrutinized, and it was noticed that despite the Advisory No. 01/2022 dated 02.12.2022 of JNCH and the binding judicial pronouncements, in a number of cases, penalties have routinely been imposed on the Customs Brokers. Accordingly, it is once again impressed upon the Adjudicating Authorities of JNCH and the proper officers under Section 28 and Section 124 of the Customs Act, 1962, that routinely making Customs Brokers co-noticees in the Show Cause Notices or imposing penalty on them, in cases involving interpretation of statute regarding classification or availment of exemption notification, or even in cases where valuation of goods is disputed, is in violation of CBIC Instructions quoted above.

6. An illustrative list of situations; wherein making the Customs Brokers as co-noticees in the Show Cause Notices or imposing penalty on them by the Adjudicating Authorities, is not in line with CBIC Instruction No. 20/2024 dated 03.09.2024, is as under:

- If on the issue involved in the Investigation Report / Audit Report or proposed Show Cause Notice, there has been litigation in the past, in the case of any importer / exporter and the matter is still at appellate stage, that is a clear indication that it is an interpretative issue. In such cases, invoking penal provisions against the Customs Broker is not proper.
- In cases where export incentives like Drawback, RoDTEP, RoSTEL have been claimed, but export proceeds have not been realized by the exporters (non submission of BRC cases), there is no basis to allege wrong doing by the Customs Broker, unless the specific role of the Customs Broker in abetting the exporter is found during investigation by any investigation Unit (SIIB, CIU, Preventive Commissionerate or DRI).
- If the goods have been described accurately in the Bill of Entry, and the said description of goods has been accepted as correct by the proper officer of Customs, viz. assessing officer of Group or examining officer of Docks, then there is no ground to allege any lapse on the part of the Customs Broker even if there is a dispute about availability of the benefit of notification or classification.
- In cases emanating from Post Clearance Audit (PCA), wherein Audit Report has been sent under Section 110AA of the Customs Act after completion of Audit, there is no ground to invoke penal provisions against the Customs Broker as the scope of Audit is limited to the declarations and documents submitted by the importer.

7. The proper officers issuing the Show Cause Notices as well as the Adjudicating Authorities are advised to take guidance from this Advisory and follow the CBIC Instructions referred above. They need to maintain judicial discipline by following the ratio of the decisions of the higher judicial forums and refrain from penalizing Customs Brokers in a routine manner in matters involving the interpretation of statute, when no

evidence of wrongdoing on the part of Customs Brokers is unearthed during investigation by any investigation Unit (SIIB, CIU, Preventive Commissionerate or DRI).

8. This issues with the approval of the Pr. Chief Commissioner of Customs, Mumbai Zone II.

(Prasanna Virupakshappa Pattanashetti)
Additional Commissioner of Customs,
PCCO Zone-II, JNCH, Nhava Sheva.

Copy to :

1. The Commissioner of Customs, NS-General / I / II / III / IV / V, JNCH.
2. The Addl. / Jt. Commr / Dy. Commissioner of Customs, Centralised Adjudication Section, JNCH.
3. The Dy.Commr. / Asstt.Commr. of Customs, All Assessing Groups, JNCH.
4. DC/EDI, JNCH, Nhava Sheva.
5. DC/AC, Apprg. Main (Imp.), JNCH, Nhava Sheva.
6. DC/AC, Apprg. Main (Exp.), JNCH, Nhava Sheva.
7. DC/AC, CAC (Imp & Exp), JNCH, Nhava Sheva.
8. DC/AC, CRAC, JNCH, Nhava Sheva.
9. Office Copy.