

**Before District Consumer Disputes Redressal Commission, Mumbai Suburban, New  
Administrative Building, Third floor, Opp. Dr. Babasaheb Ambedkar Garden, Bandra  
(East), District Mumbai Suburban – 400051.**

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DCDRC/MS/ CC/375 of 2016  
Date of Admission - 20/09/2026  
Judgement Dated - 04/09/2026

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SIDHARTH NARESHCHAND SOGANI

M/S.SIDHARTH SILK MILLLS

AS PROPRIETOR THEREOF AS MANUFACTURER,

EXPORTERS AND COM MISSION AGENT

HAVING OFFICE AT SSAS COMPLEX, T.C. GUPTA,

COMPOUND, KHERNAI ROAD,

SAKINAKA, ANDHERI (W),

MUMBAI – 400072.

..... Complainant

**V/s.**

QATAR AIRWAYS CARGO

404,, THE AVENUE, BEHIND HOTEL INTERCONTINENTAL AIRPORT ROAD,

NAVPADA, MAROL, ANDHERI (EAST),

MUMBAI – 400059.

.....Opposite Parties

**Before : - Hon'ble Smt. Samindara R. Surve , President,  
Hon'ble Shri. Sameer S. Kamble, Member**

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For Complainant - Adv.Smt.Krishna Sharma

For Opposite Party - Adv.Saosh Damania

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**JUDGMENT**

**PER : Hon. Smt. Samindara R. Surve, President**

1. The present Complaint has been filed by the Complainant against the Opposite Party under the provisions of the Consumer Protection Act, 1986, inter alia, seeking value of

goods the amounts towards business loss, freight charges compensation, cost etc. on account of the deficiency in service and unfair trade practice.

**The brief facts of the present case are as under:**

2. The Complainant is the Proprietor of M/s. Sidharth Silk Mills, the Manufacturer & Exporter. The Opposite Party is Qatar Airways Cargo. The Complainant has stated that on 18<sup>th</sup> March, 2015, the Complainant booked a cargo shipment of 140 boxes containing readymade T-shirts with Qatar Airways for delivery to their customer, M/s. Yash Imports Inc., JFK Airport in New York on or before March 30, 2015. The Complainant has stated that the total value of the said cargo was \$79,297 USD, and the freight paid was Rs.3,92,586/- thereon. The said consignment was sent through the Opposite Party. The Complainant has stated that on 29<sup>th</sup> March, 2015, only 137 boxes were delivered at the destination. The Complainant has stated that due to the missing 3 boxes value whereof was Rs.21,067.60, its customer refused to accept the delayed partial delivery and cancelled a subsequent contract for 2,000 boxes, causing a business loss calculated at Rs.3,72,000/-. The Complainant therefore sent notices and emails in May and October, 2015 to the Opposite Party, however, it failed to deliver the 3 missing boxes or settle its claim. Therefore, the Complainant has filed the present Complaint, inter alia sought total compensation of Rs.12,09,210.47, being the actual Loss and Freight Refund of Rs.7,85,653.60 alongwith the interest, compensation for Deficiency in Service Rs.1 lakh, Rs.50,000/- towards mental torture, agony and hardship , Rs.50,000/- towards the business loss suffered and Rs.35,000/- towards the legal cost etc. on account of the deficiency in service and unfair trade practice.

3. On admission of the complaint and issuance of the notice by this commission, the Opposite Party appeared through its Advocate and filed its written statement inter alia denied all the allegations made against it in the Complaint and contended that a shipment of 140 boxes containing "Readymade Garments" was issued under a Master Airway Bill (MAWB) on 18<sup>th</sup> March, 2015, which was scheduled to fly from Mumbai to New York (JFK) via Doha. The said Opposite Party has also contended that the booking schedule changed on 23<sup>rd</sup> March, 2015, due to payload restrictions and 137 boxes were initially delivered to New York on 29<sup>th</sup> March, 2015, 2 remaining boxes left behind in Mumbai were shipped to New York on 1<sup>st</sup> April, 2015 and the final 1 box left behind was identified and shipped on 7<sup>th</sup> April, 2015. Accordingly, all boxes were fully delivered, and the customer of the Complainant confirmed receipt of all the items by 8<sup>th</sup> April, 2015. Therefore, all items were ultimately delivered intact to the recipient of the Complainant.

4. The Opposite Party has also contended the under the Conditions of Carriage/Contract and the Montreal Convention MC99, written complaints regarding delay must be submitted within 21 days from the date the goods are placed at the disposal of the recipient. The Opposite Party contended that since the Complainant has failed to submit any such Complaint, the claim is barred by limitation. The Opposite Party has denied any negligence, deficiency, or bad faith, stating the delays were due to operational constraints of payload and overhanging cargo restrictions. The Opposite Party has contended that the allegations made against it are hypothetical, baseless, and aimed at unjust enrichment and for commercial purpose, sought dismissal thereof with cost of Rs.50,000/- as litigation expenses.

5. Thereafter both the parties filed their respective affidavit of evidence and written arguments and made oral arguments. This Commission has considered all the above and framed following points for determination viz.

| Sr. No. | Points                                                                               | Answer             |
|---------|--------------------------------------------------------------------------------------|--------------------|
| 1.      | Whether the Complainant is Consumer?                                                 | No                 |
| 2.      | Whether this Commission has jurisdiction to try and entertain the present Complaint? | No                 |
| 3.      | Whether the Complainant is entitled for the reliefs as prayed in the Complaint?      | No                 |
| 4.      | What order?                                                                          | As per final order |

## **Findings**

### **As to the Point no.1**

6. In the present case the Complaint has been filed by the Complainant, which is the Proprietary concern, viz. M/s. Sidharth Silk Mills. The Complainant is the Manufacturer & Exporter. The case of the Complainant is that on 18<sup>th</sup> March, 2015, the Complainant booked a cargo shipment of 140 boxes containing readymade T-shirts with Qatar Airways for delivery to their customer, M/s. Yash Imports Inc., JFK Airport in New York. Out of which only 137 boxes were delivered at the destination and due to the missing 3 boxes value whereof was Rs.21,067.60, its customer refused to accept the delayed partial delivery and cancelled a subsequent contract for 2,000 boxes, causing a business loss calculated at Rs.3,72,000/-. The Opposite Party has specifically contended that the claim arising out of the transaction of

an air shipment of goods for commercial/business purposes. Thus, we observe that the claim of the Complainant is arising out of a contract, which was done for business, commercial purpose to earn profit. Therefore, as provided under section 2 (1) (d) of the Consumer Protection Act, 1986, the Complainant is not a Consumer, consequently the Opposite Party is not the service provider. We therefore answer the said point in negative.

**As to the Point nos.2 and 3**

7. On 18<sup>th</sup> March, 2015, the Complainant booked with the Opposite Party for shipment to JFK, New York of Cargo consisting of 140 boxes containing readymade T-shirts. On 20<sup>th</sup> March, 2015, the custom clearance completed under Shipping Bills Nos. 8489735 and 8489832. The freight rate agreed at Rs. 140/- per kg and total freight paid was Rs.3,92,586/- , the value of the said goods was US\$79,297, the Complainant has produced the Invoices nos.137 & 138 dated 18<sup>th</sup> March, 2015 in support of its case. The Complainant has submitted that on 29<sup>th</sup> March, 2015, the Opposite Party delivered only 137 boxes out of 140 and produced the Delivery order/chalan. The Complainant has submitted that about a week later, the Opposite Party, carrier offered delivery of the remaining 3 boxes, value whereof was Rs.21,067.60/- to its overseas buyer. However, the said buyer declined to accept the late delivery, and the 3 boxes remained with the Opposite Party carrier. The Complainant has submitted that due to the delay and incomplete initial delivery, the New York buyer cancelled a subsequent order of 2,000 boxes, causing a direct business loss of Rs. 3,72,000/-.The Complainant has submitted that it tried to resolve the issue by sending notices and letters to the Opposite Party and the legal notice dated 26<sup>th</sup>October, 2015, but received no resolution or refund despite assurances, which has caused deficiency in service and unfair trade practice. And on account of this, the Complainant sought compensation totalling Rs.7,85,653.60 along with interest and costs, being Rs. 3,92,586/- towards refund of freight charges ,Rs. 3,72,000/-towards loss of business Order, and Rs. 21,067.60 towards the value of remaining undelivered cargo.

8. The Opposite Party has submitted that in the present case involves a commercial transaction between the business entities being a large manufacturer/exporter rather than a personal consumer grievance. Thus, the claim if any, the same falls under the jurisdiction of a Civil Court rather than the Consumer Forum and in support of its submission relied upon the judgement of the Hon'ble National Commission in the case of *Albin Micheal v/s. Air Asia India Pvt. Ltd.*, passed in the Revision Petition no.2564 of 2018, wherein it was decided that the Complainant firm was not a Consumer and the air shipment was in related to commercial transaction, which is not a consumer dispute. In the present case also the Complainant has shipped the readymade garments for earning the profit, hence the transaction involved in the

present case is purely of commercial purpose. We therefore observe that this commission has no Jurisdiction to try and entertain the present Complaint as it is a Commercial dispute between the parties.

9. From the record, it is evident that on 18<sup>th</sup> March, 2015, the Opposite Party issued a Master Airway Bill issued for 140 boxes of Readymade Garments to be shipped from Mumbai (BOM) to New York (JFK) via Doha (DOH). The Opposite Party submitted that between 23<sup>rd</sup> to 26<sup>th</sup> March, 2015, the shipment faced schedule alterations and offloading due to payload capacity restrictions and overhanging cargo. The Opposite Party also submitted that from 27<sup>th</sup> to 29<sup>th</sup> March, 2015, the subject cargo was dispatched in batches of 137 boxes reached New York on 29<sup>th</sup> -30<sup>th</sup> March, April 7, 2015. The Opposite Party submitted that the Mumbai warehouse checks revealed 3 missing boxes, out of which 2 found initially and 1 box was found later and which were subsequently flown to New York on 1<sup>st</sup> April, and 7<sup>th</sup> April, 2015. However, the Complainant submitted a claim notice on 14<sup>th</sup> May, 2015, requesting settlement. The Opposite Party has submitted that under the Conditions of Carriage, Contract Terms, and Clause 2.3 of Article 12 of the Montreal Convention (MC99), complaints regarding cargo delay must be submitted in writing within a period of 21 days of delivery as provided under clause 10.1.2 of the Conditions of the Contract. However, the Complainant has filed its claim past this window only on 12<sup>th</sup> May, 2015, making it legally invalid. In support of its submissions, the Opposite Party relied upon the judgement of the Hon'ble National Commission in the case of *Air India vs. Sushil Kumar, in Revision Petition no.492 of 2013*, on the point that airline terms published on websites are legally binding on passengers.

10. The Opposite Party airline has contended that it fully delivered all 140 boxes to the recipient at New York. The delay stemmed from operational payload limits permitted under carriage terms, therefore the recovery of the claim, if any for refusal of acceptance of the delivery by the recipient and thereby cancelation of further contract, the Opposite Party is not a party to the said contract made between the Complainant and its overseas buyer and there is no privity of contract between them. Therefore, the claim arising thereof can be construed as claim for damages, which amounts to recovery or money suit, the Consumer Complaint cannot be entertained for the same.

11. The Opposite Party has also submitted that it is the standard practice in commercial transit for the party dispatching goods to secure adequate cargo insurance; failure to do so does not transfer liability to the airline. In the present case it was for the Complainant to obtain the insurance policy and it cannot shift the said liability upon the Opposite Party. As

far as merits of the present case is concerned, since this Commission has no jurisdiction to decide the complaint, we refrain commenting upon it.

12. We therefore observe that the Complainant cannot be termed as 'Consumer' as it carries business of export to its various customers and, as such, engaged in commercial activities for gaining profit. Therefore, the business activities carried out by Complainant comes under the purview of Commercial activities to generate profits by way of export/import of various products. The person who carries out activities for the 'commercial purpose' for earning profit is not a Consumer and the dispute between the parties is not a consumer dispute and hence it is not protected under the provisions of Consumer Protection Act, 1986. The Complainant does not fall within the definition of 'Consumer'. Hence, the present Consumer Complaint is not tenable and deserves to be dismissed. We therefore answer the said points in negative and pass the order accordingly.

13. The present Complaint has been filed in English language, hence the judgement is passed in English language. The judgement is passed after discussion and unanimously.

### **ORDER**

1. The Complaint is dismissed;
2. The parties to bear their own cost;
3. The certified copy of this order to be sent to the parties free of cost as per rule.

Date :- 04/09/2026

Place :- Bandra – Mumbai.

Sd/-

**(Sameer S. Kamble)**  
**Member**

Sd/-

**(Samindara R. Surve)**  
**President**