

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Customs Appeal No.51001 of 2021 (DB)

[(Arising out of Order-in-Original No.48-MK-POLICY-2021 DATED 14.06.2021 passed by the Commissioner of Customs (Airport and General), New Customs House, New Delhi.)]

M/s.Jetset Shipping Pvt.Ltd.,

H.No.48, 2nd Floor, WZ-49,
Block-A, Sharda Puri Ramesh Nagar,
New Delhi.110 015.

Appellant

VERSUS

Commissioner of Customs,

(Airport and General),
New Customs House,
Near IGI Airport,
New Delhi.

Respondent

APPEARANCE:

Ms. Vidhushi Subham, Advocate for the appellant
Shri M.R.Dhaniya, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 55570/2024

DATE OF HEARING: 02.04.2024
DATE OF DECISION: 18.04.2024

BINU TAMTA:

The appellant being the Customs Broker ('CB') has challenged the Order-in-Original No.48/MK/Policy/2021 dated 14.06.2021 where his licence (valid upto 09.10.2026) was revoked and the security deposit amount was forfeited along with penalty of Rs.50,000/- under Customs Brokers Licensing Regulations, 2018 (CBLR).

2. On the basis of the Analytics Report received vide email dated 17.08.2020 from Joint Director, DGARM, New Delhi, inquiry of violation under CBLR, 2018 was initiated against the appellant. Accordingly, show cause notice dated 20.12.2020 was issued to the appellant for the contravention of provision of Regulation 10(n) of the CBLR. Pursuant to the inquiry, the inquiry report dated 18.03.2021 was submitted, whereby it was found that the Customs Broker had failed to comply with the obligations cast upon them under the provisions of Regulation 10(n) of CBLR, 2018.

3. During verification/identification of 'Risky Exporters' by the respective GST Commissionerate, several exporters were found to be non-existent at their registered addresses, whose export consignments were handled by the appellant. On physical verification of identification of the Risky Exporters viz. M/s.Jupiter Exports, M/s.D.N. Enterprises and M/s. Kunj Textiles were found to be non-existent. Therefore, it appeared that the Customs Broker had not bothered to follow KYC guidelines as prescribed under the Regulations. By the impugned order, the Commissioner, Customs in exercise of powers under Regulation 14 and 18 read with Regulation 17(7) of CBLR, 2018 passed the impugned order, which is under challenge before us.

4. We have heard Ms. Vidhushi Subham, learned Counsel for the appellant and Mr. M.R. Dhaniya, learned Authdorisid Representative for the Revenue and have perused the records of the case.

5. Learned Counsel for the appellant submitted that the appellant acted with due diligence as the KYC documents were verified from the Government Website for GST and Income Tax Department. The documents produced are official documents and its correctness cannot be doubted. The appellant denied that under the Regulations, there is any requirement to physically verify the address of the exporters. The learned Counsel for the appellant placed reliance on the decisions of the Tribunal specifically dealing with the issue where several exporters were found to be non-existent by the GST Commissionerate on the basis of the report by the Directorate General of Analytics and Risks Management (DGARM).

6. Learned Authorised Representative submits that as per mandate of the Regulation 10(n) of the CBLR, 2018 read with the Circular no.09/2010-Customs dated 08.04.2010, it was incumbent upon the CB to verify and identify and functioning of his client at the declared address by using reliable, independent authentic documents, data or information which apparently the CB has failed to do so. Since large number of exporters were found to be untraceable, it appears that the CB has failed to exercise due diligence and grossly violated the KYC guidelines of the said circular dated 08.04.2010. He further submitted that a large number of 19 exporters were found to be non-existent which is not a mere coincidence but shows failure of the appellant to perform its obligation as provided under Regulation 19(n) of the CBLR, 2018. The appellant has failed to produce the

exporters whose goods he had handled for the process of export which ultimately resulted in the IGST refund frauds. The Customs Broker operates on the basis of trust. He acts as an agent of the Customs House as well as of the exporter and importer. Acting as a Customs Broker, the CB should take all steps to observe related laws meticulously.

7. The issue for our consideration is whether the revocation of the CB licence is justified on the ground that the several exporters whose consignments were handled by the appellant, having committed IGST fraud and were found to be un-traceable on physical verification by the DGRAM, New Delhi, is justified. We find that this issue has been considered at length in the decision of this Tribunal in

Mauli Worldwide Logistics vide Final Order No.50561/2022

dated 04.07.2022 by referring to the earlier orders:-

“(a)Final order No.52053-52054/2021 dated 3.12.2021 of CRM Logistics Pvt. Ltd.

(b)Final order No.500002/2022 dated 3.1.2022 of M/s.Anax Air Services Pvt. Ltd.

(c)Final order No.50347/2022 dated 29.04.2022 of M/s.Perfect Cargo and Logistics.”

The observations of the Tribunal are as under:-

“17. It is undisputed that the GSTIN, PAN, IEC, and other documents obtained by the appellant as a part of the KYC were genuine documents and were issued by the officers concerned. In our considered view, if the GSTIN is issued by the officers to persons who did not exist at the time of verification it could mean that the officers have issued GSTIN to non-existent firms or that they had subsequently either stopped operating from that address or that they had moved from that place and have not changed the address. **In any of these scenarios, if the GSTIN was issued by the departmental officers to such a**

large number of non-existent persons, it shows either the lack of any due diligence on the part of the officers or an inherently flawed system of issuing GSTIN. The appellant cannot be faulted for trusting the GSTIN issued by the department.

18. Similarly, if the importer-exporter code⁶ issued by the Director General of Foreign Trade⁷ is wrongly issued to non-existent businesses and entities, the appellant cannot be blamed for trusting the IEC issued by the DGFT. Similar is the case with respect to other documents such as PAN card (issued by the Income Tax Department), Driving Licence (issued by the Transport Department), Voter ID (issued by the Election Commission). When a document is issued by a Government authority, it is reasonable to presume it to be valid. It is not open to the appellant to question the issue of these documents and as a Customs Broker to sit in judgment over the decisions of these officers. **If the verification reports are true and none of the exporters existed at their premises, the irresistible conclusion is that all these officers of various departments have been either extremely careless or were operating under flawed systems which allowed documents to be issued to non-existing businesses.**

19. It would have been a different matter if the documents produced by the appellant were fake or forged and were not issued by the officers. Such is not the case. In fact, the entire investigation by DGARM was initiated based on the GSTIN issued to various assesseees as available in its System. Therefore, there is no possibility of the GSTIN being not issued by the department because it was extracted from its own system. Similarly, the Importer-Exporter Code (IEC) is an essential field for filing any Shipping Bill in the Customs EDI system and we find it unbelievable that an IEC not issued by the DGFT would be accepted by the Customs EDI system. Since the GSTIN is PAN based, the PAN must have also been issued by the Income Tax Department. It is a different matter if the Customs Broker files export documents in the name of "A" when the goods are actually being exported by "B" or produces forged documents. Such is not the allegation in this case. To sum up, indisputably, various documents such as GSTIN, IEC, PAN card, etc. were issued by the concerned authorities which were obtained by the appellant as a part of KYC.

21. We find that Regulation 10(n) requires the Customs Broker to **verify correctness of Importer**

Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. This responsibility does not extend to physically going to the premises of each of the exporters to ensure that they are functioning at the premises. When a Government officer issues a certificate or registration with an address to an exporter, the Customs Broker cannot be faulted for trusting the certificates so issued. It has been held by the High Court of Delhi in the case of **Kunal Travels**⁸ that **“the CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect of clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area..... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e., KYC, etc. would have been done by the customs authorities.....”** (emphasis supplied).

22. The Customs Broker is not Omniscient and Omnipotent. The responsibility of the Customs Broker under Regulation 10(n) does not extend to ensuring that all the documents issued by various officers of various departments are issued correctly. The Customs Broker is not an overseeing authority to ensure that all these documents were correctly issued by various authorities. If they were wrongly issued, the fault lies at the doorstep of the officer and not the Customs Broker.

23. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, by the time of verification, situation may have changed. If so, it is a ground for starting a thorough investigation by the officer and is not a ground to suspend/cancel the licence of the Customs Broker who processed the exports. It is not the responsibility of the Customs Broker to physically go to and verify the existence of each exporter in every location, let alone, keeping track if the exporter has moved from that address. In this case, there is no clarity whether the exporters were not available at the registered

premises on the dates of export or if they ceased to operate after the export. Even if the exporters have changed their addresses and failed to intimate, it cannot be held against the Customs Broker.

25. We now proceed to examine the scope of the obligations of the Customs Broker under Regulation 10(n). It requires the Customs Broker to **verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.** This obligation can be broken down as follows:

- a) Verify the correctness of IEC number
- b) Verify the correctness of GSTIN
- c) Verify the identity of the client using reliable, independent, authentic documents, data or information
- d) Verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information

26. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade and the GSTIN is issued by the GST officers under the Central Board of Indirect Taxes and Customs of the Government of India or under the Governments of State or Union territory. The question which arises is has the Customs Broker to satisfy himself that these documents or their copies given by the client were indeed issued by the concerned government officers or does it mean that the Customs Broker has to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) does not place an obligation on the Customs Broker to oversee and ensure the correctness of the actions by the Government officers. Therefore, the verification of documents part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as the Customs Broker satisfies itself that the IEC and the GSTIN were, indeed issued by the concerned officers. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. The presumption is that a certificate or registration issued by an officer or purported to be issued by an officer is correctly issued. Section 79 of the Evidence Act, 1872 requires even Courts to presume that every certificate which is purported to

be issued by the Government officer to be genuine. It reads as follows:

"79. Presumption as to genuineness of certified copies. The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government.

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper."

27. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have correctly issued the certificate or registration. Of course, if the Customs Broker comes to know that its client has obtained these certificates through fraud or misrepresentation, nothing prevents it from bringing such details to the notice of Customs Officers for their consideration and action as they deem fit. However, the Customs Broker cannot sit in judgment over the certificate or registration issued by a Government officer so long as it is valid. In this case, there is no doubt or evidence that the IEC, the GSTIN and other documents were issued by the officers. So, there is no violation as far as the documents are concerned.

28. The third obligation under Regulation 10(n) requires the Customs Broker to verify the identity of the client using reliable, independent, authentic documents, data or information. In other words, he should know who the client is and the client cannot be some fictitious person. This identity can be established by independent, reliable, authentic:

- a) documents;
- b) data; or
- c) information

29. Any of the three methods can be employed by the Customs Broker to establish the identity of his client. It is not necessary that it has to only collect information or launch an investigation. So long as it can find some documents which are independent,

reliable and authentic to establish the identity of his client, this obligation is fulfilled. Documents such as GSTIN, IEC and PAN card issued etc., certainly qualify as such documents. However, these are not the only documents the Customs Broker could obtain; documents issued by any other officer of the Government or even private parties (so long as they qualify as independent, reliable and authentic) could meet this requirement. While obtaining documents is probably the easiest way of fulfilling this obligation, the Customs Broker can also, as an alternative, fulfill this obligation by obtaining data or information. In the factual matrix of this case, we are fully satisfied that the appellant has fulfilled this part of the obligation under Regulation 10(n).

30. The fourth and the last obligation under Regulation 10(n) requires the Customs Broker to verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. This responsibility, again, can be fulfilled using documents or data or information so long as it is reliable, independent and authentic. Nothing in this clause requires the Customs Broker to physically go to the premises of the client to ensure that they are functioning at the premises. Customs formations are only in a few places while exporters or importers could be from any part of the country and they hire the services of the Customs Brokers. Besides the fact that no such obligation is in Regulation 10(n), it will be extremely difficult, if not, totally impossible, for the Customs Broker to physically visit the premises of each of its clients for verification. The Regulation, in fact, gives to the Customs Broker the option of verifying using documents, data or information. If there are authentic, independent and reliable documents or data or information to show that the client is functioning at the declared address, this part of the obligation of the Customs Broker is fulfilled. If there are documents issued by the Government Officers which show that the client is functioning at the address, it would be reasonable for the Customs Broker to presume that the officer is not wrong and that the client is indeed, functioning at that address. In the factual matrix of this case, we find that the GSTIN issued by the officers of CBIC itself shows the address of the client and the authenticity of the GSTIN is not in doubt. In fact, the entire verification report is based on the GSTIN. Further, IECs issued by the DGFT also show the address. There is nothing on record to show that either of these documents were fake or forged.

Therefore, they are authentic and reliable and we have no reason to believe that the officers who issued them were not independent and neither has the Customs Broker any reason to believe that they were not independent.”

8. Following the aforesaid observations made in the similar context, we are of the view that revocation of the customs broker licence is not justified. The appellant had verified the antecedents and correctness of IEC, KYC documents, GST and other documents of their clients from the Government’s official website (DGFT, GST and Income Tax Department) before the clearance of the goods. As noted by the Tribunal there cannot be more reliable data than the official government website. Consequently, there was no reason for the appellant to have suspected the genuineness of the documents when the contents thereof matched with the details available on the official government website. Therefore, we do not find any violation of the obligation in terms of Regulation 10(n) by the appellant. The impugned order revoking the Customs Brokers Licence, forfeiting the amount of security deposit and imposition of penalty needs to be set aside.

9. The appeal is, accordingly, allowed.

[Order pronounced in open court on 18th April, 2024]

(Binu Tamta)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Ckp.

