

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

CUSTOMS APPEAL NO. 50789 OF 2021

[Arising out of the Order-in-Original No. 41/MK/POLICY/2021 dated 10/06/2021 passed by Commissioner of Customs (Airport & General), New Customs House, New Delhi -110 037.]

M/s Surya Jyoti Global Logistics, **...Appellant**
Customs Broker,
E-33/1, First Floor, Govindpuri, Opp. Kalkaji Depot,
New Delhi - 110 019.

Versus

Commissioner of Customs, **...Respondent**
(Airport & General)
New Customs House, Near IGI Airport,
New Delhi - 110 037.

WITH
CUSTOMS APPEAL NO. 50790 OF 2021

[Arising out of the Order-in-Original No. 42/MK/POLICY/2021 dated 10/06/2021 passed by Commissioner of Customs (Airport & General), New Customs House, New Delhi -110 037.]

M/s Hari Mohan Dwivedi, **...Appellant**
Customs Broker,
17/91, Gali No. 2, East Sagarpur,
New Delhi - 110 046.

Versus

Commissioner of Customs, **...Respondent**
(Airport & General)
New Customs House, Near IGI Airport,
New Delhi - 110 037.

AND
CUSTOMS APPEAL NO. 51654 OF 2021

[Arising out of the Order-in-Original No. 63/MK/POLICY/2021 dated 18/06/2021 passed by Commissioner of Customs (Airport & General), New Customs House, New Delhi -110 037.]

M/s Rajinder P. Kapur, **...Appellant**
Customs Broker,
R-21, Pulpahladpur, New Bari Masjid,
New Delhi - 110 044.

Versus

**Commissioner of Customs,
(Airport & General)**
New Customs House, Near IGI Airport,
New Delhi – 110 037.

...Respondent

APPEARANCE:

Shri B.L. Garg, Advocate for the appellant.
Ms. Jaya Kumari, Authorized Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51144-51146 /2022

DATE OF HEARING : 15.11.2022

DATE OF DECISION: 06.12.2022

P.V. SUBBA RAO

These three appeals deal with the same issue although they arise from different orders-in-original passed by the Commissioner of Customs (Airport & General), New Delhi. Hence, they are being disposed of together.

2. The Directorate General of Analytics and Risk Management¹ of the Central Board of Excise & Customs (CBEC) conducted an analysis of the GSTIN data and came to the conclusion that certain registrants of the GSTIN who also exported goods were risky exporters. DGARM sent an e-mail to the respective Commissionerates of Customs in whose jurisdiction the Customs Brokers who processed exports in respect of such exporters were registered including to the respondent in these appeals.

¹ **DGARM**

3. Following upon the e-mail, verification was conducted by the jurisdictional officers who found that the exporters did not operate from the registered premises. It was, therefore, concluded that the exporters did not exist at all. Secondly, it was felt that the customs brokers who processed exports made in the name of these exporters had not fulfilled their obligations under Regulation 10 (n) of the Customs Brokers Licensing Regulations, 2018². The Respondent issued show cause notices to the appellants herein and appointed enquiry officers which culminated in the issue of the impugned orders. The issues which arise in these three appeals are :-

- (i) What is the scope of the obligation of the Customs Broker under Regulation 10 (n)?
- (ii) What is the evidence adduced in each of the show cause notices to allege that the Customs Broker had not fulfilled its obligation under Regulation 10 (n)?
- (iii) Based on the evidence adduced in the show cause notices and the submissions in defence by the appellant, can the impugned orders be sustained?

4. The first of these questions is common to all the appeals and is discussed below :-

Scope of Regulation 10 (n)

² **Regulations**

5. "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 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

6. 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 Trade³ and the GSTIN is issued by the GST officers under the Central Board of Indirect Taxes and Customs⁴ of the Government of India or under the Governments of State or Union territory. The question which arises is does the Customs broker have to satisfy itself 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, obligations under Regulation 10(n) of CBLR cannot be read

³ **DGFT**

⁴ **CBIC**

to mean the latter as it would amount to treating the Customs Broker as one who can and is responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that the Regulations under the Customs Act prevail over the actions under the Foreign Trade (Development and Regulation) Act, 1992 under which the IEC is issued by DGFT and the Central Goods and Services Tax Act (or state GST Act) under which the GSTIN is issued by the GST officers which is not a correct construction of the legal provisions. Therefore, the verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it 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.

7. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have correctly issued the certificate or registration. It has been held by the High Court of Delhi in the case of **Kunal Travels⁵** 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).** Of course, if the Customs Broker comes to know that its client had 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

⁵ 2017 (3) TMI 1494- Delhi High Court

as it is valid. In these appeals, there is no doubt or evidence that the IEC and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned.

8. 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

9. 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 conduct a physical verification 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. If a document is issued by any other person not interested in the relationship of the client and the Customs Broker, it can be called independent. But it should also be reliable and authentic and not one issued by any Tom, Dick and Harry. Documents such as PAN card issued by the Income tax, driving licence issued by the RTO, Election voter card issued by the Election commission, the passport issued by the Passport officer, etc., certainly qualify as such documents as none of these departments have any interest in the relationship

between the client and the Customs Broker and these documents are presumed to be authentic and reliable having been issued by the Government officers. 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 these cases, we are fully satisfied that the appellants fulfilled this part of the obligation under Regulation 10(n).

10. 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 they are reliable, independent and authentic. Nothing in this clause requires the Customs Broker to physically visit the premises of the client to ensure that they are functioning at the premises. Customs formations are located only in a few places while exporters or importers could be from any part of the country and they hire services of the Customs Brokers. Besides the fact that there is no such obligation in Regulation 10(n), it will be extremely difficult, if not, impossible, for the Customs Broker to physically visit the premises of each of its clients for verification.

The regulation, in fact, gives the option of verifying the functioning of the client 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 these cases, 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.

11. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete as discussed in the above paragraph, if the client moves to a new premises and does not inform the authorities or does not get his documents amended, such act or

omission of the client cannot be held against the Customs Broker. Of course, if the Customs Broker was aware that the client has moved and continues to file documents with the wrong address, it is a different matter.

12. In these appeals, negative reports were issued by the jurisdictional GST officers who, or whose predecessors or colleagues, must have issued the GST registration. Thereafter, if it is found that the exporter is not operating from that address at all and the GST registration was wrongly issued, the responsibility rests on the officer who issued the GST Registration and not the Customs Broker. This wisdom in hindsight of the officer that the GSTIN was wrongly issued at that address cannot be used against the Customs Broker. The appellants relied upon the GST Registration Certificates and if relying on them is an offence, issuing them when the firms didn't even exist must, logically be a much graver offence and the officers who issued them must be more serious offenders. There is nothing in the reports of the jurisdictional officers which were the Relied Upon Documents in the SCN to indicate as to why and how the GST registration was issued when the exporters did not exist at all. We also find that there were other documents procured by the appellant issued by various other authorities which have not been alleged to be, let alone, proven to be fake or forged by the Revenue. Evidently, they also must have been issued by concerned officers like the GST Registration issued by the jurisdictional officers.

13. Unless all these officers of various organisations (including the jurisdictional GST officer who issued the registration in December 2018) either acted fraudulently or carelessly, the above could not have been issued.

14. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, with efflux of time, when the GST officers went for verification, situation 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. We also find that there is nothing in the SCNs to prove that the exporters did not exist or operate from the addresses when the Shipping Bills were filed.

15. It is the case of the Revenue that Government officers **issue these documents as per their mandate which does not include physical verification** of the business premises based on online applications. They are not mandated to ensure that the exporter(s) exist and are functioning from these premises but the Customs Broker is so mandated by Regulation 10(n) of the CBLR, 2018 which obligation does not get obliterated or diluted by the fact that officers of various departments have issued the documents.

16. As far as the documents issued by various Government officers are concerned Revenue's case is that the documents

were neither issued fraudulently nor issued carelessly but were issued within the mandate of the officers who issued them and this mandate does not include physical verification. In other words, the submission is that the system designed by the Government for issue of these certificates itself is such that they can be issued even to persons who do not exist at all at the declared premises.

17. It is common knowledge that in designing schemes for issuing registrations, certificates or providing incentives, two conflicting objectives of due diligence and facilitation are balanced. Too many checks can make life difficult for the exporter or the citizen and too much facilitation can open the doors for frauds. Determining the golden mean and where to draw the line is a matter of public policy. The extent of liberalization or tightening may also vary greatly from one system to another and that is also a matter of public policy. The entire system of exports is based heavily on trust and facilitation and very less emphasis on due diligence which enhances trade facilitation but also makes it vulnerable to misuse by fraudsters. The IEC is issued by DGFT based only on an online application and a few easy to obtain documents. Similarly, as per the submission of the learned authorized representatives for the Revenue, GSTIN is also issued without any verification at all and through an automated process. So, one cannot rule out the possibility of an IEC and/or GSTIN being issued without the person even operating its business from the address. The IEC

forms the foundation for the entire system of controls and, in turn, is the basis for issue of various licences and scrips by the DGFT and is also the basis for Customs allowing exports. As Risk Management System⁶ permits majority of the exports without either assessing the documents or examining the records, there is a very high probability of any fraudster successfully exporting the goods (or even empty containers) and claiming export incentives and profiting from it.

18. However, **the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in these appeals is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer by the Customs Broker.**

19. We now proceed to examine the remaining questions have to be answered with respect to each of the individual appeals.

Customs Appeal No. 50789 of 2021 : M/s Surya Jyoti Global Logistics

⁶ RMS

20. The appellant in this case is aggrieved by the order-in-original No. 41/MK/POLICY/2021 dated 10.06.2021 whereby its customs broker licence has been revoked and security deposit of Rs. 5 lakhs has been forfeited and a penalty of Rs. 50,000/- has been imposed upon the appellant. The show cause notice alleges that the appellant had processed exports in respect of 13 exporters who did not exist. Supporting evidence has been adduced in the form of Relied Upon Documents⁷ 1, 2, 3 & 4 of which RUD 1 is a single page e-mail received from the DGARM to the Commissioner stating the 2,710 risk exporters were identified of which 2005 could not be verified physically whose exports were handled by 672 customs brokers. This e-mail does not spell out any customs broker including the appellant herein. If there were enclosures to the e-mail they were not made part of the show cause notice. RUD 2, 3 & 4 are the copies of the verification reports of the officers. These are as follows :-

“Verification of M/s A to Z International (RUD – 2). The report was as follows :-

“Recommendation about the bonafides of the entity verified:

The Physical verification of the Assessee was done and it was found non-existent.

1. Difference in tax liability as shown in GSTR-1 and GSTR-3B, during the period Dec-18 to Sep 19: The assessee has shown tax liability of Rs. 1,26,29,820/- in GSTR1 while paid only 1,05,98,033/- in GSTR3B. The short payment is Rs. 20,31,787/-.

⁷ RUD

2. Difference in ITC claimed in GSTR-3B and that shown in GSTR-2A: The Assessee has availed ITC in GSTR-3B for Rs. 91,32,961/- and shown only Rs. 29,39,521/- in GSTR2A. The excess availed ITC is Rs. 61,93,440/-.
3. ITC involved on inward supplies and outward supplies as per E way bill and comments thereon: Inward supplies ITC value is Rs. 91,32,961/- and outward supplies ITC value is Rs. 6,21,720/-
4. Comments on realization of export proceeds as per BRC : The assessee has not submitted any documents.

On the basis of above verification, because of being non-existent on physical verification and having huge gap of ITC (between availed in GSTR3B and GSTR2A), the exporter seems risky”.

Verification of M/s Suryavanshi Impex (RUD – 3):

21. This verification report does not even indicate the name of the exporter being verified. Only the GSTIN is mentioned. It appears that the officers have gone to that address to enquire if a business with a particular GST number existed at that place and were not able to get a confirmation. Businesses and persons are known by their names and not by their GSTIN numbers, PAN No., Voter ID Card, Passport No./Mobile No. etc. Therefore, it is not surprising that the existence of the business could not be confirmed from the GSTIN. The operative part of this report is as follows :-

“Recommendation about the bonafides of the entity verified:

Non Existent Entity

NOC Denied

Recommendation about the bonafides of the entity verified:

["Non existent exporter"]

Verification of M/s T.R. Trading (RUD – 4) : The operative part of the report is as follows :-

22. "During physical verification, the exporter assessee found non-existent. The assessee did not respond to the letters sent to him through email for submission of details/documents in pursuance of CBIC Circular No. 131/1/2020-GST dated 23.01.2020. All the details above have been filled on the basis of registration details of the exporter – assessee available in "Sakhsam" system. Further, bonafide of assessee also appear doubtful as analysis from E-way Bill portal hints of existence of fake ITC generator (s) [who supplied the goods which they did not receive] in the supply chain of the assessee. **In view of above, it appears that the exporter – assessee M/s T R Trading** (GSTIN – 07BEUPT4538K1ZL) is not bonafide".

23. Based on these reports, the show cause notice was issued alleging that the appellant had not fulfilled its obligations under Regulation 10 (n). The appellant had submitted that it had indeed conducted the necessary verification as is required under Regulation 10 (n) and had collected the following documents from each and every one of its clients.

- "(i) Copy of IEC of the exporter ;
- (ii) Copy of PAN card of exporter ;
- (iii) Copy of Aadhar card of exporter ;

- (iv) Copy of GST registration of the exporter ;
- (v) Bank account details of the exporter, attested by the bank ;
- (vi) AD code details of the exporter issued by the concerned bank".

24. The Commissioner did not agree that the appellant had fulfilled its obligation holding that documents obtained by the appellant were not as per Board Circular 9/10-CUS. Paragraph 29 of the order of the Commissioner is reproduced below :-

"29. In this regard, I find that Annexure to Circular No. 09/2010-Customs clearly states that in case of individual form of organization out of the 6 documents mentioned in the Annexure, any two will suffice. Whereas, in case of other forms of organization, all the documents listed respectively, in the annexure needs to be obtained by CB. On perusal of the list of documents obtained by CB which was provided by CB, it is clear that CB has not taken the documents as prescribed in the Annexure to said Circular. Further, CB has quoted Circular No. 02/2018-Customs dated 12.01.2018 that in case of individuals, a single identity document having proof of identity as well as proof of residence would suffice e.g., Aadhar Card. On plain reading of the above mentioned circular that this circular has referred Circular No. 07/2015-Customs dated 12.02.2015 and Circular No. 13/2006-Customs dated 26.04.2016. Both these circulars pertain to relaxed KYC norms, which authorized courier companies were required to fulfill. **From this, it's very clear that the revised norms pertain to courier companies only**".

25. We find that in this case, investigations were conducted only in respect of three exporters. Of these the report in respect of A to Z International is that the exporter seems risky. In case of Suryavanshi Impex, the Report does not indicate even the name of the exporter. Enquiries appear to have been conducted based on GSTIN number only. The report says "NOC denied" and "Non-existent entity". In case of M/s T.R. Trading it is reported

that the exporter was not bonafide. There is nothing in Regulation 10 (n) which requires the Customs broker to check if the exporter was risky in the opinion of any officer or obtain any NOC from any officer or to get a confirmation from any officer that the exporter is bonafide. Even when the reports say "Non-existent", they do not clarify if the exporter never functioned from that premises and GSTIN has been wrongly issued or the exporter ceased to function at that address after the exports. Therefore we do not find any evidence to prove that the Customs broker violated Regulation 10 (n). The impugned order, therefore, cannot be sustained.

Customs Appeal No. 50790 of 2021 – M/s Hari Mohan Dwivedi

26. In this appeal, the appellant assailed order-in-original dated 10.06.2021, whereby the appellant's Customs Broker Licence was cancelled the entire amount of security deposit was forfeited and the penalty of Rs. 50,000/- was imposed upon the appellant. Show cause notice in this case referred to 17 exporters indicated by DGARM as being not verified or traceable. However, physical verification was conducted in respect of only one **M/s Vintage Overseas [GSTIN07AUOPR2011A1Z2]** which is enclosed as RUD – 1 to the show cause notice. The report in this RUD is as follows :-

"Recommendation about the bonafider of the entity verified:

Physical Verification :- During Physical Verification, the firm/unit was found not to be existing/functional.

Details of financial verification (from GST Portal & E-way Bill Portal) is as under (from July 2017 to Dec-2019) :-

Tax Paid Analysis :-	ITC Analysis
GSTR-1 (Tax Payable) = Rs. 6,81,452/-	GSTR-2A (ITC available)=4,27,989/-
GSTR-3B (Tax Paid through Cash) = 0	GSTR-3B (ITC availed) = 4,30,800/-
GSTR-3B (Tax Paid through ITC)= 3,92,990/-	Excess ITC availed=430800-427989=
Tax Short paid = 6,81,452-0+392990)=2,88,462/-	2,811/-
E-Way Bill Analysis:-	
E-way Bill outwards (Tax amount) = Nil	
Difference of Tax amount between GSTR-1 & Outward E-way Bill=681452-0=	6,81,452/-
Difference of Tax amount between GSTR-3B & Outward E-way Bill=392990-0=	3,92,990/-
E-way Bill Inwards (Tax amount) = 13,730/-	
Difference of ITC between GSTR-2A & Inward E-way Bill=427989-13730=	4,14,259/-
Difference of ITC between GSTR-3B & Inward E-way Bill=430800-13730=	4,17,070/-
<u>BRC Received Analysis</u> :- On perusal of GST database, it has been observed that the unit/firm has shown zero rated sale in the months of August-2017 & Feb-2018 only. But on perusal of BRC status on DGFT portal, it has been observed that no BRC has been issued/realized for the Shipping Bills related to the months from August-2017 to till date.	

Conclusions: On perusal of above financial verification. It appears that there is difference of Rs. 2,811/- between the GSTR-2A and 3B and the outward E-way bill is NIL and the amount claimed in Inward E-way bill is short of Rs. 4,14,259/- in comparison to GSTR-2A and is short of Rs. 4,17,070/- in comparison to GSTR-3B. Also, as per DGFT portal. No BRC has been received from August 2017 till date. Therefore, further verification is required/recommended".

27. This sole verification report shows that during physical verification, the exporter was found to be non-existent. However, the report further clarifies that several GST Returns have been filed by the exporter and tax was also paid. Nothing in this report supports the view that the exporter never operated from that premises let alone prove that the Customs broker has not verified

the exporter as per Regulation 10 (n). The impugned order cannot, therefore, be sustained.

Customs Appeal No. 51654 of 2021 – M/s Rajinder P. Kapur

28. This appeal is filed by M/s Rajinder P. Kapur assailing order-in-original dated 18.06.2021, whereby his Customs Broker licence was revoked, the security deposit of Rs. 50,000/- was forfeited and the penalty of Rs. 50,000/- was imposed; 31 exporters whose exports the appellant had processed are alleged to be non-existent. However, verification reports were enclosed only in respect of the following three exporters :-

- (i) M/s ZAPP Incorporation ;
- (ii) M/s G.R. Traders ;
- (iii) M/s Imperial Enterprises.

29. These three verification reports which were relied upon are listed as RUD – 1, 2 & 3.

Report in respect of M/s ZAPP Incorporation is as follows :-

Recommendation about the bonafides of the entity verified:-

<p>1. On physical verification on 25.02.2020, the assessee was found Non-Existent. Further, letter dated 11.02.2020 written to assessee to submit Annexure-A as per Circular No. 131/1/2020-GST dated 23.01.2020 returned undelivered with remarks "No such firm".</p> <p>2. During analysis of details of suppliers it has been noticed that two suppliers namely M/s Reema Polychem Pvt. Ltd. and M/s Tanan Concepts Pvt. Ltd. have already got cancelled their GST registration and one supplier M/s Shivam Enterprise has not filed GSTR-3B since Oct, 2w018 and it appears that he has not paid duty amounting to Rs. 2.66 Crores for goods supplied after Oct., 2018, which further indicates that these suppliers also may be non bonafide suppliers. The suppliers M/s Reema Polychem Pvt. Ltd. and M/s Shivam Enterprises have been identified as risky suppliers/exporters by DGARM.</p> <p>3. In view of the above, the exporter-assessee M/s ZAPP Incorporation does not appear to be bonafide".</p>

Report in respect of M/s G.R. Traders is as follows :-

“On physical verification of the registered premises of the assessee, it was found to be non-existent. The visiting team during physical verification tried to contact the assessee on registered mobile no. but it was of other person. Exporter has taken ITC of Rs. 53,16,105/-. Letter sent to the exporter to furnish the information as per Annexure-A to the CBIC Circular No. 131/1/2020-GST dated 23.01.2020 was also returned undelivered.

As the assessee was found non-existent, therefore, the assessee in pursuance of CBIC Circular No. 131/1/2020-GST dated 23.01.2020 is non-bonafide”.

Report in respect of M/s Imperial Enterprises is as follows :-

Recommendation about the bonafides of the entity verified:

The party has been found non-existent. The registration of the party has been initiated for cancellation. The party filed GSTR 3B upto August 2019. ITC availed in the ITC ledger of M/s Imperial Enterprises amounting to Rs. 71 lakh has also been blocked as per rule 86A of CGST Rules 2017. The ITC availed by M/s Imperial Enterprises seems be not genuine and therefore is inadmissible. Further investigations are underway. **Hence NOT recommended”.**

30. None of the three reports establish that the exporters never operated from those premises. Nor do they support the view that the Customs broker had not verified as per Regulation 10 (n). The Customs broker is not required obtain any “Recommendation” or a certificate from any officer that the exporter is “bonafide”. The impugned order, therefore, cannot be sustained.

31. We, therefore, find that in each of these cases, the evidence produced in the show cause notices does not support the allegations made therein that the appellants had violated

Regulation 10 (n) of CBLR. In view of the above, we find that the impugned orders cannot be sustained and need to be set aside. All appeals are allowed and the impugned orders are set aside with consequential benefits.

(Order pronounced in open court on 06/12/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK