

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,COURT NO. 3**

CUSTOMS APPEAL NO. 51779 OF 2021

[Arising out of Order-in-Original No. 25/MK/Policy/2021 dated 31.03.2021 passed by the Commissioner of Customs (Airport), New Delhi]

WORLD LINE CARGO MOVERS

11/12, 2nd Floor, West Patel Nagar
New Delhi.

APPELLANT

Vs.

**COMMISSIONER OF CUSTOMS ,
(Airport & General),
NCH, IGI, Airport,
New Delhi**

RESPONDENT

Appearance:

Present for the Appellant : Shri G S Arora, Advocate

Present for the Respondent: Shri Girijesh Kumar, Authorised Representative

CORAM:

HON'BLE Ms.BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

Date of Hearing : **22/11/2023**

Date of Decision : **13/02/ 2024**

FINAL ORDER No. 50240 /2024

PER HEMAMBIKA R PRIYA

The present appeal has been filed against the Order-in-Original dated 25/MK/Policy/2021 dated 31.03.2021 passed by the Commissioner of Customs (Airport), New Delhi by M/s World Line Cargo Movers (hereinafter referred to as the appellant) wherein the Customs Broker license was revoked, the security deposit was forfeited and penalty of Rs.50,000/- was imposed.

2. The brief facts are that the DGARM (Directorate General of Analytics and Risk Management), CBIC sent a communication identifying risky exporters involved in fraudulent IGST refunds,

who were not traceable, along with the details Customs Brokers involved in the clearance of the alleged risky consignments. It was noted that the appellant had handled the consignments of 48 risky exporters whose premises could not be verified physically or were untraceable. Based on the reports received, the jurisdictional Commissioner alleged that the appellant had violated the provisions of CBLR, 2018 by not following the KYC guidelines. The CB license was suspended and thereafter, the inquiry as mandated was conducted. The impugned order was passed ordering for revoking the license, forfeiture of deposit and imposition of penalty.

3. The learned Counsel for the appellant submitted that no relied upon documents such as the DGARM report was shared with the appellant, thereby violating the principles of natural justice. The counsel further contended that with the introduction of GST, no Shipping Bill can be processed without the valid GSTIN being mentioned on the shipping Bill. As regards IGST refunds, he contended that the same are automatically credited to the account of the exporter which is registered via AD code with the Department, which also requires extensive documentation. The mere non-traceability of the exporters in itself is no basis to assume that the exports were fraudulent and were not eligible for IGST refund. The learned counsel further submitted that there is no evidence in the Show cause notice, Inquiry report or the impugned order to substantiate that the exports were incorrect or illegal, nor that there any error in the documentation.

4. The learned counsel further submitted that Regulation 10(n) of CBLR, 2018 mandates the CB to verify the identity of importer by way of independent documentation. In the present case the appellant cannot be held responsible for the exporters not being traceable as all necessary documents to ascertain the veracity of the exporter had been undertaken none of the documents is found to be false or forged. He contended that mere Non-traceability of an exporter by itself does not lead to any conclusion that the appellant had violated the provisions of Regulation 10(n) of the CBLR 2018. He submitted that the appellant had taken all the necessary documents and conducted verification of the exporters based on documents, which has been held as valid in catena of judgements. The learned counsel went on to further submit that the department had also not adduced any evidence that the exporters of the appellant were not present at the address mentioned in the documents at the time of filing their shipping bills. There was no requirement under the CBLR, 2018 for a CB to make a visit to the business premises is on the exporter for verifying its functioning.

5. As regards the finding of the violation of Board's circular, the learned counsel submitted that the subject circular was issued in respect of the earlier regulations viz., Custom House Agents Licensing Regulations, 2004 and the same are no longer valid after the promulgation of CBLR, 2018. He also contended that Regulation 10(n) does not prescribe any particular document other than the IEC number and GSTIN. The CB has the freedom

to ascertain the identity and functioning of its client by using any reliable, independent, authentic document, data or information, which was done by the appellant. He relied on the following decisions to support his contention:

- (i) **M/s Bright Clearing and Carrier Private Limited vs Commissioner of Customs (Airport & General) and M/s Star Carriers vs Commissioner of Customs, (Airport and General) [2022 (11) TMI 935 - CESTAT NEW DELHI]**
- (ii) **Mauli Worldwide Logistics vs Commissioner of Customs, (Airport and General) [2022-TIOL-603-CESTAT-DEL]**

6. While reiterating the findings of the adjudicating authority, the learned Authorised Representative submitted that the Tribunal in **M/s Baraskar Brothers vs Commissioner of Customs (General), Mumbai [2009(244) ELT 562]** had upheld that “there is no second opinion of the fact that the CHA is a very important component in the whole system of Customs Administration, which has a bearing on Customs revenue collection and national security. The CHAs cannot shy away from the responsibilities and obligations casted upon them by law”. In this context, the learner Authorised Representative submitted that the appellant did not take the documents as prescribed in the annexure to the Board’s circular wherein the CB, in case of a company, has to obtain Certificate of Incorporation, Memorandum of Association, Articles of Association, Power-of-Attorney granted to its managers, PAN allotment letter, etc. However, the appellant had obtained only the IEC, Pan card, Aadhaar card, electricity bill, which were not as per the circular guidelines. The appellant had relied on Board’s guidelines which were applicable to authorised

courier companies, and not for others. He prayed that the appeal may be dismissed and the impugned order upheld.

7. We have heard the learned counsel for the appellant and the learned authorised representative for the Department. The issue relates to the appellant, who is a Customs Brokers [CB] whose license was revoked by the impugned order under Customs Brokers Licensing Regulations [CBLR], 2018 and the security deposits made by him was forfeited. Penalty was also imposed on the ground that the appellant had violated Regulation 10(n) of CBLR 2018.

8. The factual matrix is that the Directorate General of Analytics and Risk Management [DGARM] of the Central Board of Indirect Taxes and Customs [CBIC] analysed their data and identified risky exporters involved in fraudulent IGST refunds. The verification of the premises was carried out by the jurisdictional GST officers, wherein exporters who were not found available at their registered premises were identified as risky. DGARM also identified the Customs Brokers who had handled these exports by these exporters and informed the details to respective jurisdictional Commissionerate. Consequent to this DGARM intimation, Show Cause Notice was issued to the appellant and Inquiry officer was appointed to conduct an Inquiry. After considering the reply to the Show cause notice and the inquiry report, the Commissioner has passed the impugned order holding that the appellant had violated Regulation 10(n) of the CBLR.

9. In order to appreciate the arguments of the Learned Counsel and the Learned AR, we need to refer to Regulation 10 of CBLR, 2018 which reads as follows:

“10. Obligations of Customs Broker.-A Customs Broker shall.....
(n) 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;”

10. We note that the learned consultant for the appellant has submitted that this responsibility cast on the CB as per the above regulation is fulfilled if the Customs broker obtains at least two KYC documents. It is not the responsibility of the Customs Broker to physically inspect the premises of each of its clients to ensure that it is operating from that address. He submits that it is far too onerous for the Customs Broker to fulfil such a responsibility. 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 obligation essentially involves two step verification viz., the correctness of IEC number and the correctness of GSTIN and in addition, verify the identity and functioning of the client using reliable, independent, authentic documents, data or information. It is noted that IEC and GSTIN are issued by the Government departments. Therefore, any verification would be based on the copies of these documents submitted by the client/exporter, which

can be verified independently online in DGFT/GSTN portals. The Department cannot expect the appellant/CB to be responsible to ensure the correctness of the actions of the Government Department which have issued these certificates. Consequently, verification of certificates as part of the obligation under Regulation 10(n) on the Customs Broker stands satisfied as long as it satisfies itself that the IEC and the GSTIN were issued by the concerned officers. We note that same view was taken in a similar case by this Tribunal in its decision in **M/s Bright Clearing & Carrier Pvt Ltd., vs Commissioner of Customs(Airport & General) and Star Carriers vs Commissioner of Customs(Airport & General) [2022 (11) TMI 935 - CESTAT NEW DELHI]** has held as follows:

"7. 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 [DGFT] and the GSTIN is issued by the GST officers under the CBIC or by officers of the Government of India or under the Governments of State or Union territory. The question which arises is whether the Customs broker is required to satisfy itself that these documents or their copies given by the client were, indeed issued by the concerned government officers OR is the Customs Broker also required to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) of CBLR cannot be read to mean the latter as it would imply treating the Customs Broker as one who is competent and responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that actions by the Customs Broker under the CBLR prevail over the actions by officers 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). In our view this is not a correct construction of the legal provision. Therefore, 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 have been issued by an officer 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.

80. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have issued the certificate or registration correctly. It has been held by the High Court of Delhi in the case of Kunal Travels [2017 (3) TMI 1494- Delhi High Court] 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 as it is valid. In these cases, 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."

11. 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. As per the Regulation, this identity can be established by independent, reliable, authentic: a) documents; b) data; or c) information. Any of these methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that the CB appellant has to only conduct a physical verification or launch an investigation. So long as the CB can find documents which are independent, reliable and authentic to establish the identity of his client, this obligation is fulfilled. In addition, under Regulation 10(n) the Customs Broker is required 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 go to the premises of the client to ensure that they are functioning at the premises. We find that both the GSTIN as well as the IEC indicates the address of the client. This in itself is independent data to verify the correctness of the identity/address of the client. We also note that there is nothing on record to show that either of these documents were fake or forged. Therefore, once verification of the address is complete as discussed above, the responsibility cast on the appellant under Regulation 10(n) stands fulfilled. In this regard, we note that the Principal Bench of this Tribunal in the case of **M/s Mauli Worldwide Logistics vs Commissioner of Customs (Airport & General) [2022-TIOL-603-CESTAT-DEL]** held as follows:

“31. 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.
32. We, therefore, find that the Customs Broker has not failed in discharging his responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist during subsequent verification by the officers.”

12. We also note that in a recent judgment of the High Court of Delhi in the case of Naman Gupta vs Commissioner of Customs (A & G) dated 30.01.2024 in W.P. (C) 15808/2022 held as follows:

“20. It is thus evident from the legal position as enunciated in Kunal Travels (supra), Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in Kunal Travels (supra) **held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client.** As such, as a Customs Broker, the petitioner cannot be held W.P. (C)15808/2022 Page 22 of 22 liable because exporters were not traceable, after the issuance of ‘Let Export Orders’ and export of the goods out of the country.”

13. In view of the above discussion, the impugned order revoking the Customs Brokers license of the appellant, forfeiting their security deposit and further imposing penalty on the appellant cannot be sustained and are set aside. Consequently, the appeal is allowed, with consequential relief, if any.

(Pronounced in the open court on 13.02.2024)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)