

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2,
R.K.PURAM, NEW DELHI-110066
COURT

Appeal No. : C/50997/2021-DB

[Arising out of the OIO - 70-MK-POLICY-2021, dated -23/06/2021, passed by Commissioner of
CUSTOMS(AIRPORT & GENERAL) - NEW DELHI]

MAULI WORLDWIDE LOGISTICS

....Applicants

J-2/107-B, DDA Flats, Kalkaji,
New Delhi – 110 019.

Vs.

**COMMISSIONER, CUSTOMS-NEW DELHI
(AIRPORT AND GENERAL)**

....Respondents

New Custom House, Near IGI Airport,
New Delhi – 110 037.

Appearance:

Shri L.B. Yadav, Consultant

**....For
Applicants**

Vs.

Shri Nagender Yadav, Authorized Representative

**.... For
Respondents**

CORAM:

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

**Date of Hearing : 30/05/2022
Date of Decision : 04/07/2022**

FINAL ORDER No. 50561/2022

PER P. VENKATA SUBBA RAO

We have heard Shri L.B. Yadav, learned Consultant for the appellant and Shri Nagender Yadav, learned Authorized Representative appearing for the Revenue and perused the records of the case.

2. M/s Mauli Worldwide Logistics¹, a licensed Customs Broker, is aggrieved by the order in original² dated 23.6.2021 passed by the Commissioner, Customs-New Delhi (Airport and General), New Delhi

¹ Appellant

² Impugned order

revoking its Customs Broker Licence, under Regulation 14 & 18 read with Regulation 17(7) of Customs Brokers Licensing Regulations³, 2018, forfeiting its security deposit of Rs. 75,000 and imposing a penalty of Rs. 50,000. The operative part of the impugned order is as follows:

"32. From all the facts and circumstances narrated above, I find that the CB has violated the Regulation 10(n) of CBLR, 2018 and hence, I pass the following order:

ORDER

In exercise of the powers conferred in terms of Regulation 14 & 18 read with Regulation 17(7) of CBLR, 2018 (erstwhile Regulation 18 & 22 read with Regulation 20(7) of CBLR 2013),

- (i) I hereby revoke the license No. R-11,/DEL/CUS/2011 (PAN: AKCPK 2519G) valid upto 20.02.2021 of M/s. Mauli Worldwide Logistics;
- (ii) I order **for forfeiture of the amount of security deposit** of Rs. 75,000/- (Rupees seventy five thousand only) furnished by them;
- (iii) I **impose penalty of Rs. 50,000/-** on M/s Mauli Worldwide Logistics

33. This order is being issued without prejudice to any other action that may be taken against the CB or any other persons(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or any other law for the time being in force for the present or any other past violations committed by them." **(emphasis supplied)**

3. The factual matrix which led to the issue of this order is that the Directorate General of Analytics and Risk Management⁴ of the Central Board of Indirect Taxes and Customs analysed the data and identified risky exporters involved in execution of frauds and got requisite verification done by the jurisdictional GST officers and identified exporters who could not be found at all physically at their registered premises. DGARM also found that exports by these exporters were handled by certain Customs Brokers including the appellant herein and

³ CBLR

⁴ DGARM

reported them to the respective Commissionerates including the Respondent herein. The Commissioner issued a show cause notice dated 30.12.2020 to the appellant and appointed an Inquiry Officer, who, after considering the reply filed by the appellant and completing the inquiry submitted his Inquiry Report in favour of the appellant on 25.3.2021. The concluding paragraph of the inquiry report is as follows:

“ 6.2 In view of my findings above, I am of the considered opinion that **the Noticee/CB obtained the requisite KYC documents and thus conducted the KYC verification with the utmost diligence possible** in the given circumstances and the **allegation of violation of provisions of Regulation 10(n) of the CBLR, 2018 has not been established against CB.**” (emphasis supplied)

4. Thus, the Inquiry Officer found that the charge in the show cause notice that the appellant had violated Regulation 10(n) of CBLR, 2018 was not established. The Commissioner issued a show cause notice and the appellant submitted its reply dated 5.5.2021 to the show cause notice before the Commissioner. The Commissioner, therefore, passed the impugned order holding that the Inquiry Officer had erred and that the allegation of violation of Regulation 10(n) against the appellant was established and accordingly passed the impugned order.

5. The questions which need to be answered in this case are:

a) Given the factual matrix of the case and evidence available on record, was the Commissioner correct in holding that the appellant Customs Broker had violated Regulation 10(n) of CBLR, 2018?

b) If the answer to (a) above is affirmative, can the revocation of licence of the appellant Customs Broker be sustained?

c) If the answer to (a) above is affirmative, is the forfeiture of security deposit correct?

d) If the answer to (a) above is affirmative, is the imposition of penalty of Rs. 50,000/- upon the appellant Customs Broker correct?

6. Although both the show cause notice and the impugned order listed several suspected exporters whose exports the appellant had handled and who are said to be untraceable, the reports in respect of only three exporters were narrated in paragraph 6 of the show cause notice but the Relied Upon Documents enclosed with the show cause notice included reports of officers in respect of eleven exporters. Evidence and documentation, if any, in respect of the remaining exporters who were said to be untraceable is not part of the show cause notice or proceedings. The relevant extracts of these eleven reports are as follows:

RUD	Exporter	Remarks of the officer
1	Mirza Export	Ms/ Mirza exports was found non-existent at their registered address. M/s. Mirza exports got GST registration on September 2019. Therefore, the ITC availed by M/s. Mirza Exports is not genuine and thus, is not admissible. Signed by Deputy/ Assistant Commissioner on 2/06/2020
2	Sunrise sales Corporation	Non-existent exporter. NOC denied. Signed by Deputy/ Assistant Commissioner on 21/05/2020
3	Tirupati Enterprises	Non-existent exporter. NOC denied. Signed by Deputy/ Assistant Commissioner on 15/06/2020
4	S&S Deals	M/s. S&S Deals was found non-existent at their registered address.

		M/s S&S deals got GST registration November 2018. Therefore, the ITC availed by M/s S&S Deals is not genuine and thus is not admissible. Signed by Deputy Commissioner on 2/06/2020
5	Yaline International	As during physical verification, the exporter-assessee found non-existent and the exporter- 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, N.A. (Not available) has been mentioned in the columns where details are not available in registration details of the exporter – assessee in Saksham System. Signed by the Superintendent on 8.7.2020
6	Bimla Impex	All the details above have been filled solely on the basis of registration details of the exporter-assessee available in Saksham System. Further, the bonafide of the assessee also appear doubtful as analysis from E way Bill portal hits of circular trading and existence of fake ITC generator(s) in the supply chain of the assessee. In view of the above, it appears that the exporter- assessee is not bonafide Signed by Deputy/ Assistant Commissioner on 9/07/2020
7	Aftab Enterprises	The physical verification (discreetly tried to search the premises due to address is incomplete without block/pocket number in registration details of M/s. Aftab enterprises was conducted. The firm was found non-existent and the assessee has not provided documents as per Circular No. 131/1/2020-GST dated 23.01.2020 along with Annexure- A. On analysing E-way bill portal, the following observations have been made: (a) Total inward supply Rs.31,77,59,702 (b) Total Outward supply- details not found Signed by Assistant Commissioner on 5/07/2020
8	Saw Exports	The assessee has been found to be non-existent at its registered place of business. Therefore, the ITC availed by the assessee is not genuine and thus,

		is not admissible Signed by Deputy Commissioner on 5/06/2020
9	Narayana Trading Company	Non- existent entity. NOC denied. Signed by Deputy Commissioner on 15/06/2020
10	Aman Exports	Since exporter found non-existent. Accordingly, ITC is inadmissible, NOC may not be granted. Signed by Deputy Commissioner on 02/06/2020
11	Sai Enterprises	On physical verification, the assessee was found non-existent. Further, letter dated 11.02.2020 written to the assessee to submit Annexure A as per the Circular No. 131/1/020-GST dated 23.01.2020 returned undelivered with remarks "pooch taach karne per pata nahin chala atah Vaapas" In view of the above, the exporter- assessee does not appear to be bonafide.

7. The allegation in the show cause notice is that when verified, the officers found that the exporters were non-existent and therefore the shipping bills were filed on their behalf by the appellant without the requisite verification as per Regulation 10(n). Therefore, the appellant is liable for action.

8. The findings recorded in paragraphs 25, 26 and 27 of the impugned order are as follows:

"25. I further noted that Board vide Circular No. 09/2010-Customs dated 08.04.2010 has specifically prescribed "**Know Your Customer (KYC)**" guidelines to the CBs/CHAs so that indulging in fraudulent activities and with a view to control offences involving various *modus-operandi* such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/customer was also provided. Here, it appears that the CB failed to exercise due diligence and grossly violated the KYC guidelines of the said Circular dated 08.04.2010 read with the provisions of the CBLR, 2018 as a number of exporters have been found to be untraceable. As per the 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 identity and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information which apparently the CB have failed to do.

26. I find that the inquiry officer has erred in his inquiry report in concluding that the Noticee/CB obtained the requisite KYC documents and thus conducted KYC verification with the utmost diligence possible in the given circumstances and the allegation of violation of provisions of Regulation 10 (n) of the CBLR, 2018 has not been established against CB. I find that as per table given below, out of 48 exporters handled by the noticee, none has satisfied KYC documents as per Circular No. 09/2010-Customs dated 08.04.2010.

GSTIN	Name	Form of Organisation	Features to be verified	Documents to be obtained as per Circular No. 09/2010-Customs dated 08.04.2010	Whether document submitted	Whether KYC documents satisfy the Circular No. 09/2010-Customs dated 08.04.2010	Additional documents submitted by the CHA as KYC documents received from the exporters
06MIYPS7 463R3ZE	KRISHNA MARKET- ING NETWORK	Proprietor- ship	Legal <u>name</u> Present and Permanent Address	<u>Passport</u> <u>PAN Card</u> Voter's Identity <u>Card</u> Driving <u>License</u> Bank Account <u>Statement</u> Ration Card	Yes	No	IEC, GST Registration Certificate, PAN Card, Aadhar Card Lease Deed, AD Code Letter from Bank
27BELPG9 083H2ZI	GLACIER ENTER- PRISES	Proprietor- ship	Legal <u>name</u> Present and Permanent Address	<u>Passport</u> <u>PAN Card</u> Voter's Identity <u>Card</u> Driving <u>License</u> Bank Account <u>Statement</u> Ration Card	Yes	No	IEC, GST Registration Certificate, PAN Card, Aadhar Card

27. Thus, I find that CB has not shown due diligence while obtaining the documents as per KYC norms. Since such a large number of the exporters are untraceable, it appears that the CB has failed to comply with the obligations cast upon them under the provisions of the Regulation 10 (n) of the CBLR, 2018. The CB failed to exercise due diligence and grossly violated the KYC guidelines of the said Circular No. 09/2010-Customs dated 08.04.2018 read with the provisions of the CBLR, 2018 as a number of exporters have been found to be untraceable. As per the 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 identity and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information which apparently the CB have failed to do so. The Circular No. 09/2010-Customs clearly states that in case of an individual firm or organisation

out of the 6 documents mentioned in the Annexure, any two will suffice. Whereas, in case of other firms or organisation, all the documents listed respectively, in the annexure needs to be obtained by CB. On perusal of the list (provided by CB) of documents obtained by CB from various exporters, it is clear that CB has not taken the documents as prescribed in the said Circular from each and every exporter. Further, stating about Circular No. 02/2018-Customs dated 12.01.2018 which states that in case of individuals, a single identity documents having proof of identity as well as proof of residence would suffice eg. 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. 13/2016-Customs dated 26.04.2016. Both these circulars pertains to relaxed KYC norms, which authorized courier companies were required to fulfil. From this, its very clear that the revised norms pertains to courier companies only. Further, as per Circular No. 09/2010-Customs dated 08.04.2010, apart from documents to be obtained, there is also a provision for features to be verified by the CB, whereas in case of individuals, present and permanent address in full, complete and correct and in case of company name of company, principal place of business, mailing address of the company and telephone, fax number, email address are to be verified by the CB. It is evident from the record in place and submission given by the notice that no such feature verified by the notice. 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. Being so placed, the Customs Broker would have access to sensitive information that can be potentially misused for smuggling/evasion/misuse of benefit. If CB had done verification of present and permanent address in full, complete and correct and principal place of business, which is a mandatory feature to be verified by the CB as per Circular No. 09/2010-Customs, huge government revenue, running in crores could have been saved”.

9. Learned counsel for the appellant submits that the impugned order is not sustainable and that in similar matters where licences were cancelled alleging violation of Regulation 10(n) by the Customs Brokers based on similar reports of DGARM, this Tribunal has set aside the impugned orders and restored the licences of the Customs Brokers in the following cases:

- 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 & Logistics

10. Learned Departmental representative reiterates the above findings of the impugned order.

11. We have considered the submissions on both sides and perused the records.

12. The reports of the officers which were annexed as Relied Upon Documents to the show cause notice show that the GST Registrations were issued to the exporters by the Department. In fact, the analysis by the DGARM itself was based on the GST registrations issued by the department. It is also evident from the reports that the assessee exporters were also claiming input tax credit (ITC) under the GST. However, in all cases, on the day the officers went for verification, the exporters were not found operating at the business premises and the input tax credit (ITC) was reported to be inadmissible. This could mean either that these firms never existed at the premises at all and the GST Registrations were issued by the officers to non-existent firms and the officers have also been receiving GST Returns filed by them or that the firms existed originally and later ceased to operate from the premises.

13. The show cause notice alleged that the Know Your Client⁵ guidelines issued by CBIC Circular no. 9/2010-Customs dated 8.4.2010 were violated by the appellant because it failed to exercise due diligence since a number of exporters have been found to be untraceable. The show cause notice also alleged that as per the mandate of Regulation 10(n) of the CBLR, 2018 read with the Circular no. 9/2010-Customs dated 8.4.2010, it was incumbent upon the appellant to verify the identity and functioning of his client at the

⁵ KYC

declared address by using reliable, independent, authentic documents, data or information which apparently the CB failed to do.

14. The appellant's submissions before the Inquiry Officer, the Adjudicating Authority as well as before us is that they have carried out the due diligence as required under Regulation 10 (n) by obtaining the documents. The table in paragraph 26 of the impugned order (a few rows of which are reproduced above) gives the details of the KYC done by the appellant as follows:

- a)** The fifth column of the table, the documents required to be submitted as per the CBIC circular are listed;
- b)** The sixth column says if the the documents have been submitted and it says YES;
- c)** The seventh column, it indicates that the KYC documents do not satisfy the circular; and
- d)** The last column, lists the additional documents submitted by the appellant as KYC documents received from the exporter.

15. However, the Commissioner has not indicated in the impugned order as to why the documents submitted by the appellant and/or the additional documents submitted by the appellant do not satisfy the Circular. On the other hand, the report of the Inquiry Officer that the appellant had carried out due diligence is consistent with the fact that the KYC documents were obtained and submitted by the appellant before the Commissioner.

16. The reason for this conclusion by the Commissioner is in paragraph 27 of the impugned order. Since a large number of the exporters were not traceable, it was inferred that the appellant had violated Regulation 10 (n) of the CBLR 2018.

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

⁶ IEC

⁷ DGFT

(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.

20. Despite the appellant obtaining and producing various documents issued by various Government authorities as a part of KYC and producing additional documents before the Commissioner during the proceedings, since a large number of exporters were found to be non-existent at the addresses, the Commissioner inferred and held that the appellant had not fulfilled its obligations under Regulation 10(n) of CBLR, 2018.

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**

⁸ 2017 (3) TMI 1494- Delhi High Court

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.

24. On a query from the Bench as to how the Customs Broker can be faulted when he relied on the IEC, GST Registration and several documents issued by the Government and if the exporter did not exist at all at the premises how these documents were issued by several Government officers, learned Departmental Representative submitted that officers issue these documents as per their mandates which do not include physical verification of the business premises. He further clarified that in almost all these cases, the Registrations are issued by the officers based on online applications. The officers 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.

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.

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.

33. In view of the above, we proceed to answer the questions framed by us in paragraph 4 above. The answer to question (a) is that in the factual matrix of the case and evidence available on record, the Commissioner was not correct in holding that the appellant Customs Broker has violated Regulation 10(n) of CBLR, 2018. Consequently, the answer to questions (b), (c) and (d) are negative.

34. We find that the impugned order cannot be sustained and is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in Court on 04/07/2022.)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)**

PARMOD