

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51791 of 2022 [DB]

[Arising out of Order-in-Original No. 43/ZR/Policy/2022 dated 07.07.2022 passed by the Commissioner of Customs (Airport & General), New Delhi]

M/s. Durga Link Logistics (Pvt.) Ltd. **...Appellant**
A-3, Saransh Appt. 34,
I.P. Extn., New Delhi - 110092

VERSUS

Commissioner of Customs **...Respondent**
(Airport & General), New Delhi
New Customs House,
Near I.G.I. Airport,
New Delhi - 110037

APPEARANCE:

Shri L.B. Yadav, Consultant for the Appellant
Shri Girijesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 12.07.2023
DATE OF DECISION: **07.11.2023**

FINAL ORDER No. 51507/2023

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Original No. 43/2022 dated 07.07.2022 vide which the revocation of appellant's customs broker license, forfeiture of security deposit and imposition of penalty of Rs.50,000/- has been ordered. The facts in brief are as follows:

Pursuant to acting on an intelligence, the goods covered by three shipping bills filed by M/s. Batra Enterprises were got examined by the officers of SIIB, ICD (Export), Tughlakabad, New Delhi on 29.01.2021 at ICD Tughlakabad Port. The aforesaid shipping bills were filed through M/s. Durga Link Logistics Pvt. Ltd.

i.e. the appellant. When goods are exported, the exporter or its customs broker (the appellant in this case) files the shipping bill online on the Indian Customs EDI System (ICES). He also files the supporting documents such as invoice and packing list on the portal (e-sanchit) and files word copies of these documents which will be kept in a docket in the custom house. The scanned copies of the documents filed on e-sanchit help the officers to process the shipping bill quickly without having to refer to the physical copies in the docket. In this case, the Customs Broker (the appellant) allowed the freight forwarder M/s. Toshnek International Freight Forwarder to use its credentials to file the documents instead of filing the documents by itself. The freight forwarder uploaded documents (invoice and packing list) sharing inflated quantities of pan masala when the actual documents filed in the docket shared lower quantities. This, according to the Revenue was done to claim excess IGST refund. Difference in the weight and the amount declared from the weight and amount in the packing list was observed. Following are the details:

Bill of Entry No. and date	8126680 dated 23.01.2021	8582895 dated 11.02.2021	8683596 dated 16.02.2021
FOB declared value	Rs.53,00,575/-	Rs.54,44,999/-	Rs.56,61,219/-
IGST refund claim	Rs.45,96,713/-	Rs.47,91,599/-	Rs.43,90,343/-

Declared weight of Pan Masala (in kg)	2726.4	2461.5	2796
Weight of Pan Masala found on examination	450	600	450
Declared rate of Pan Masala	1110/-	907.5/-	1053.11-
Rate of Pan Masala found on examination	Rs. 250/- & Rs. 300/-	Rs.250/- & Rs.300/-	Rs.300/-

2. Those investigations were received in the Office of Commissioner of Customs (Airport & General), New Delhi through Assistant Commissioner of Customs (SIIB), ICD-Tughlakabad (Exports) on 27.10.2021. Later a copy of Order-in-Original No. 59/2021 dated 26.10.2021 in the matter was also received on 02.11.2021. Based upon the observations/findings therein and the statement of Director of appellant dated 02.07.2021 acknowledging them to be responsible for any mistake committed by Shri Pran Shanker Jha who had filed the impugned shipping bills that the Show Cause Notice No. 04/2022 dated 19.01.2022 was served upon the appellant. It was alleged that the appellant by non-filing of shipping bills of the exporter, by not checking the correctness of

information i.e. the mis-declaration of weight of pan masala in all three of the shipping bills, being the custodian of file has neglected its duties by non-uploading the proper documents, has failed to discharge his duties as customs broker. He was alleged to have contravened Regulation 10(a), 10(b), 10(d), 10(e), 10(j), 10(k) and 10(q) of Customs Brokers Licensing Regulations, 2018 (herein after referred as CBLR, 2018). Accordingly, the license of the appellant with the validity till 31.03.2031, was proposed to be revoked and the penalty was proposed to be imposed. The said proposal has been confirmed vide the order under challenge. Being aggrieved the appellant is before this Tribunal.

3. We have heard Shri L.B. Yadav, learned Consultant for the appellant and Shri Girijesh Kumar, learned Authorized Representative for the department.

4. Learned counsel for the appellant has mentioned that impugned order has been passed in sheer violation of principles of natural justice as the appellant was not given any opportunity to cross-examine Shri Pran Shanker Jha, also for the reason that no finding has been given with respect to the submissions made by the appellant. It is impressed upon that appellant had always transacted the customs clearance work in the customs station either personally or through his G-card holders (two in number). He out rightly denied transacting any business at customs station through Shri Pran Shanker Jha or anybody else who was not the authorized employee of the appellant. It is mentioned that Shri Pran Shanker Jha had not transacted any business from the customs station. Shri Pran Shanker Jha was filing check lists and

shipping bills online from the office of the appellant, stationed at IP Extension, New Delhi, hence there can be no violation of Regulation 10(b) of CBLR, 2018.

5. It is further submitted that the exporter had admitted that the clerical error had occurred in invoice cum packing list by the staff of the exporter namely, Ms. Aakansha Mishra, CHA cannot be held liable for the same. No question arises for violation of Regulation 10(d) of CBLR, 2018. Nothing has been concealed from the customs authority. The difference of weight in two separate packing lists was not to the notice of the appellant or his representatives. Hence violation of Regulation 10(j) of CBLR, 2018 has wrongly been confirmed. The appellant has duly maintained up to date customs related records and had duly cooperated with the customs authorities. The order confirming violation of Regulation 10(k) and 10(q) of CBLR, 2018 respectively is also alleged to be a wrong finding. With these submissions learned counsel has prayed for setting aside the order under challenge and for the appeal to be allowed.

6. While rebutting these submissions, learned DR has mentioned that the license of the appellant has rightly been revoked. There is no infirmity while ordering forfeiture of the whole amount of security deposit nor in imposition of penalty of Rs. 50,000/- on the appellant. In view of apparent violation of Regulation 10(b), 10(d), 10(e), 10(j), 10(k) and 10(q) of CBLR, 2018. It is mentioned that there is a sufficient admission that on behalf of the appellant, Shri Pran Shanker Jha was filing the impugned shipping bills. Though he was employee of the freight forwarder of the exporter but appellant

himself had acknowledged his responsibility for any mistake by the said representative of the freight forwarder. The said admission is sufficient to prove that CB/appellant had failed to fulfill his obligation under Section 10(b) of CBLR, 2018.

6.1 It is further submitted that different set of packing list/invoice was found, one in the docket file and another which was uploaded on e-sanchit to avail the undue export benefits. The appellant/CB was well aware of the same, still failed to bring it to the notice of the department. The violation of Regulation 10(d) and 10(e) of CBLR, 2018 has rightly been confirmed. Once there is no denial for the appellant to be the custodian of the docket file, the Regulation 10(j), 10(k) and 10(q) has been violated by the appellant. It is submitted that the appellant has failed to produce any evidence to counter the allegations against him. Though he prayed for cross-examination of Shri Pran Shanker Jha and the same was allowed also. However the cross-examination could not be conducted because Shri Pran Shanker Jha had resigned the office of freight forwarder and was no more available for the purpose. With these submissions, it is impressed upon that there is no infirmity in the order under challenge. Appeal is accordingly prayed to be dismissed.

7. Having heard the rival contentions and perusing the entire records, we observe and hold as follows:

The present case is arising out of basic fact that the appellant, being the customs broker for exporter M/s. Batra Enterprise, had filed their three shipping bills dated 23.01.2021,

11.02.2021 and 16.02.2021 for export of consumer goods including pan masala. During examination it was found that weight of pan masala mentioned on invoice cum packing list was much higher than the actual weight thereof found during examination. Resultantly vide Order-in-Original No. 59/2021 dated 26.10.2021, it was held that export of goods has been attempted to avail excess/undue export benefits such as IGST refund, than actually applicable, by way of deliberate misdeclaration/inflation of value of goods. Confirming the willful suppression and the said misdeclaration that the penalty was imposed. The impugned show cause notice dated 19.01.2022 has been issued pursuant to the aforesaid order alleging violation of several provisions of Regulation 10 of CBLR, 2018.

8. The sole adjudication in the present appeal is observed as to whether appellant has violated Regulations 10(a), 10(b), 10(d) 10(e), 10(j), 10(k) and 10(q) of CBLR, 2018. For this purpose, we adjudicate regulation wise as follows:

8.1 Regulation 10(a) of CBLR, 2018. It reads as follows:

"(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

It is apparent from the statement of the appellant dated 02.07.2021 that there is an admission of the appellant about his knowledge for the impugned shipping bills to have been filed through the freight forwarder of the exporter. As apparent from the above provision, it was obligatory for the appellant to obtain an

authorization even from the individuals by whom he is for the time being is employed as customs broker. Appellant has failed to produce any such authorization from exporter M/s. Batra Enterprises mentioning Shri Pran Shanker Jha, an employee of their freight forwarder (M/s. Toshnek International) to be the authorized representative not only for the exporter but also for the customs house agent. Absence of such authorization is more than sufficient to prove the violation of 10(a) of CBLR, 2018.

8.2 Regulation 10(b) of CBLR, 2018. It reads as follows :

"(b) transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

Though it is submitted on behalf of the appellant that no authorized person has ever appeared in customs station for the appellant and that there is no provision under CBLR, 2018 imposing restrictions on filing on shipping bills from outside of customs station through an outsider. But simultaneously, it has been stated that Shri Pran Shanker Jha had filed the check list and shipping bill not from the customs station but from the office of the appellant stationed at IP Extension. No doubt Section 2(13) of Customs Act, 1962 defines customs station to mean any customs port, customs airport, international courier terminal, foreign post office or land customs station but the intent of Regulation 10(b) is that while transacting business in customs station, the customs broker has to transact either personally or through a authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be. To our opinion the

transactions of business in relation to customs house is the idea behind Regulation 10(b). Transaction of business in customs station in case of exports is filing of shipping bills along with the invoice, packing list, checklist and all other requisite documents. In today's era of virtual transactions/online processings, physical presence in customs house for transacting the business is not required. However, the intent of the provision remains the same that business has not to be transacted by an unauthorized person i.e. Shri Pran Shanker Jha that too to the notice and knowledge of the appellant. Apparently and admittedly the customs house related transaction of business has been done by an unauthorized person. The same is sufficient to confirm violation of 10(b) of CBLR, 2018.

8.3 Regulation 10(d) of CBLR, 2018. It reads as follows:

"(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

In the present case, it is on record that the exporter vide his statement has acknowledged that the invoice cum packing lists were prepared by their staff Ms. Aakansha Mishra, Accountant. Due to clerical mistake on her part, the exporter also signed the same due to oversight and the documents with the said ignored clerical mistake were forwarded to their CHA (the appellant) for filing the checklist. He also approved the same due to over sightedness. In view of the said statement, we hold that there is nothing on record which may prove that the appellant acquired any knowledge about

any intentional change in the documents forwarded by the appellant. We also observe that the order dated 26.10.2021 which is the basis of impugned show cause notice was appealed by the exporter as well as the present appellant. The said appeal has been allowed vide Order No.765/2022-23 dated 24.06.2022 wherein it has also been held "there is no evidence that the appellant were aware of mismatch between actual quantity of pan masala and still they declared the wrong quantity in shipping bills. The checklist/ based upon documents provided by the exporter, which were filed by the appellant, were also approved by the exporter. Thus, it cannot be held that appellant deliberately or intentionally made a wrong declaration."

As far as the mis-declaration of quantity allegation is concerned, we observe from the said Order-in-Appeal that the goods were duly sealed by the exporter after obtaining self sealing permission for the department. Hence, the appellant/CB had no occasion to verify the quantity and weight of the goods sealed. The appellant had no means to verify item wise quantity or weight of the goods and in fact as, customs broker, he is not required to do so. With these findings, the penalty as was imposed upon the appellant under Section 114 (iii) was also set aside. Once there was no knowledge with the appellant about the alleged mis-declaration, once it was a case of clerical mistake and oversightedness while preparing invoice/packing list no question arises for informing anything to the department. Violation of 10(d) therefore is not sustainable. We rely upon the decision in the case of **Perfect Cargo & Logistics Vs CC (A&G), New Delhi reported**

as 2021 (376) ELT 649 (Tri.-Del.) wherein it is held that customs house agent merely processing agent of documents with respect of clearance of goods and not inspector to weigh genuineness of transaction and that if documents submitted to G-card holder, *prima facie* appear to be authentic, no reason for the card holder to verify contents of documents. **In the matter of Jeena and Company vs. Commissioner of Customs, Bangalore reported as 2021 (378) ELT 528 (Tri.-Bang.),** it has been held that "No evidence to show that Agent had knowledge of wrongdoing of importer and colluded with importer to defraud Revenue- Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer."

8.4 Regulation 10(e) of CBLR, 2018. It reads as follows :

"(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage".

We observe that violation of this regulation has been confirmed based on the fact that two set of invoices were found. One in the records with the appellant and another in the docket file with the customs house. But appellant did not make any effort to find out the reason for issuance of different set of invoices for the same shipment. We observe that the appellant has submitted that shipping bills were filed as per the invoice cum packing list provided by the exporter. The mistake has already been acknowledged by the exporter to be a clerical mistake at the end of his Accountant namely, Ms. Aakansha Mishra. The same cannot be attributed to the appellant. We hold that these submissions are insufficient to

justify the two packing lists for the same shipment. Irrespective the appellant had no *mens rea* to support the exporter for availing inadmissible export incentive but the fact remains is that once there cannot be two different documents as that of packing list with different description of the goods, it was the incumbent duty of the customs house agent to diligently check the veracity about the same. There is nothing on record about any such exercise of due diligence by the appellant. Hence, we do not find any infirmity with the violation of 10(e) has been confirmed against the appellant.

8.5 Regulation 10(j), 10(k) and 10(q) of CBLR, 2018. It reads as follows:

"(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(k) maintain up to date records such as bill of entry, shipping bill, transshipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

It has been observed that the correct invoice/packing list was not uploaded on e-sanchit by the CB but by the freight forwarder who the CB allowed to use his credentials. He could not satisfactorily answer about the change in the invoice, the violation has been confirmed. We observe that there is nothing on record to

show that the appellant refused access to or concealed or removed or destroyed the whole or any part of the documents related to impugned shipping bills. There is sufficient evidence on record to show that G-Card holder of the appellant had deposited the docket file to the scanning department of the export shed who otherwise is the custodian of the said docket file and not the customs broker as has wrongly been alleged. Neither the G-Card Holder nor the F-Card holder of appellant were aware about having different packing list in the file retained in the office of the appellant than the one as was sent to export shed as docket file. There is no allegation in the show cause notice that up to date records were not being maintained by the appellant.

With respect to his cooperation with the customs authority, it is coming apparent that he only ensured the presence of Shri Saurabh Batra, the partner of the exporter, their employee including Ms. Aakansha Mishra and the freight forwarder i.e. Shri Pran Shanker Jha. He got his authorized representatives Shri Prasanta Kumar Samanta, the F-Card holder and Shri Om Prakash Kashyap, the G Card holder examined not once but on several occasions, Hence we find that violation of regulation 10(j), 10(k) and 10(q) has wrongly been confirmed.

9. In the light of the above discussion, we are not in conformity with the findings as far as Regulation 10(d), 10(j), 10(k) and 10(q) of CBLR, 2018 are concerned. The order under challenge is therefore set aside to this extent. However, the findings in the impugned order with respect to violation of Regulation 10(a), 10(b) and 10(e) are hereby confirmed. The order to this extent is upheld.

10. From the findings as arrived above, we are of the view that though the appellant is held guilty of the violations under Regulation 10(a), 10(b) and 10(e) but these are not so grave as to justify the revocation of the customs license. These violations are observed to be the consequence of negligence on part of the appellant custom broker. Depriving him of his livelihood is held to be disproportionate in the light of given findings. Hence, we are of the opinion that ends of justice would be met if the order of forfeiting security deposit and imposing penalty is upheld and as far as the order of revocation of license is concerned, the same be set aside. We draw our support from the decision of this Tribunal in the case of **R.S.R. Forwarders Vs. Commissioner of Customs, New Delhi reported as 2018 (364) E.L.T. 541 (Tri.-Del.)** and also from the decision of **N.T. Rama Rao & Co. Vs. Commissioner of Customs, Chennai VIII reported as 2020 (371) ELT 789 (Tri.-Chennai)**. In the light of the above discussion, the order under challenge stands modified to the above discussed extent. The appeal resultantly stands partly allowed.

[Order pronounced in the open court on **07.11.2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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