

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH**

COURT NO. 4

CUSTOMS APPEAL NO. 51181 OF 2022

[Arising out of the order-in-original no. 62/MK/POLICY/2021 dated 18/6/2021 passed by Commissioner of Customs (Airport & General) New Delhi]

M/S PAWAN KUMAR TIWARI

....Appellant

N-317 B, IInd Floor, Sarita Vihar,
New Delhi-110076

Vs.

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

....Respondents

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

APPEARANCE

Shri Pawan Kumar Tiwari, for the appellant (in person)
Shri Rajesh Singh, Authorised Representative for the respondent

CORAM:

**Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Mr. P. V. Subba Rao, Member(Technical)**

**Date of Hearing : 05/06/2024
Date of Decision : 28/06/2024**

FINAL ORDER NO. 55943 /2024

P. V. Subba Rao:

We have heard the appellant and learned Authorized Representative appearing for the Revenue and perused the records of the case. M/s. Pawan Kumar Tiwari¹, a licensed Customs Broker, is aggrieved by the order in original² dated 18.6.2021 passed by the Commissioner, Customs(Airport and General), New Delhi in which he held that the appellant had violated regulation 10(n) of Customs Brokers

**1 Appellant
2 Impugned order**

Licensing Regulations³, 2018 and therefore, revoked its Customs Broker Licence, under Regulation 14 & 18 read with Regulation 17(7), forfeited its security deposit and imposed a penalty of Rs. 50,000/-.

2. The factual matrix which lead up 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 reported them to the respective Commissionerates including the Respondent herein. The Commissioner issued a Show Cause Notice⁵ dated 31.12.2020 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 23.3.2021. The conclusion of the inquiry report is as follows:

“In view of the facts of the case and discussions above, I hold that the noticee has not complied with the provisions of Regulation 10(n) of CBLR 2018 and therefore allegations in the show cause notice are sustainable.”

3. 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 correct. A copy of the inquiry report was served on the appellant

3 CBLR
4 DGARM
5 SCN

and it submitted a written representation dated 03.05.2021 to the Commissioner.

4. After considering the SCN, the inquiry report and the representation, the Commissioner passed the impugned order holding that the appellant had violated Regulations 10(n) of CBLR 2018. The questions which need to be answered by us 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 has 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?

Alleged violations of Regulation 10 (n)

5. The allegation in the show cause notice and the finding in the impugned order that the appellant had violated Regulation 10(n) is based on the fact that the appellant had filed shipping Bills in the name of some exporters who the DGARM found suspicious. Of these, physical verification was done in respect of three exporters by the field formations. Based on the reports in respect of these three exporters, it

was concluded that the exporters had not existed and by implication, the appellant had not verified if they were physically present and were operating at those premises. Thus, it was concluded that the appellant had not fulfilled its mandate under Regulation 10(n). The three reports have been reproduced in the SCN as follows:

“(i) M/s. GS Industries (07EGPPS7923R1Z3)

Remarks of jurisdictional officer (RUD-I): M/s. G S Industries is non-existent exporter. NOC denied.

(ii) M/s. R G Enterprises (08AITPC9310Q1ZN)

Remarks of the jurisdictional officer (RUD-II): M/s. R G Enterprises was found non-existent at their registered address. M/s. RG Enterprises got GST registration on December 2018. Therefore, the ICT availed by M/s R G Enterprises is not genuine and thus, is not admissible.

(iii) M/s Shree Radhe Vallabh Traders (07BNXP6441A1ZV):

Remarks of jurisdictional officer (RUD III): (i) Physical verification was done by the officers of this commissonerate, the assessee was found non-existent.

(ii) The assessee has shown tax liability of Rs 14420269/- in GSTR -1 and Rs. 14389032 in GSTR 3B in the FY 2019-20 (up to Dec 2019) i.e., they have discharged less tax liability in 3B.

(iii) The assessee had availed ITC of Rs. 5955530/- in GSTR 3B whereas ITC available in GSTR 2A is Rs. 420777/- during FY 2018-19 i.e., the party had availed higher ITC in GSTR 3B as compared to GSTR 2A.”

6. In other words, the jurisdictional officers do not deny that they had issued the GSTIN to the above three exporters although they had not existed at all subsequently at the time of verification. It is also clear that M/s. RG Enterprises had also availed input Tax Credit (ITC) under GST after being registered with GST. M/s. Shree Radhe Vallabh Traders had not only availed ITC but had also filed GST returns including showing some tax liability. Insofar as G S Industries is concerned, the jurisdictional officer denied NOC (no objection certificate). We find nothing in the Customs Act or CBLR, 2018 requires any NOC from any

officer to either export goods or for any Customs Broker to file a Shipping Bill. Therefore, this part of the report is meaningless.

7. 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

8. 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 had 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."

9. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers had 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.

10. 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

11. Any of the three methods can be employed by the Customs Broker to establish the identity of his client. It is not necessary that 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).

12. 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 there is no such obligation 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.

13. 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 completed 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.

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

15. 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.

31. We find that the impugned order cannot be sustained and hence set it aside and allow the appeal with consequential relief to the appellant.

[Pronounced in Court on **28.06.2024**]

(Dr. Rachna Gupta)
Member(Judicial)

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

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