

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**  
PRINCIPAL BENCH-COURT NO. 1

**Customs Appeal No.55467 of 2023**

[Arising out of the order-in-original no. 41/ZR/POLICY/2023, dated -26/7/2023,  
passed by Commissioner of CUSTOMS(AIRPORT & GENERAL) - NEW DELHI]

**Flyover Cargo Pvt. Ltd.**

**....Appellant**

I-190, Naraina Vihar  
New Delhi – 110 028

**Vs.**

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

**....Respondents**

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

**Appearance:**

Shri Alok Agarwal and Shri Prachit Mahajan, Advocates for the  
appellant

Shri M R Dhaniya, Authorized Representative for the respondent

**CORAM:**

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

**Date of Hearing : 04/07/2024**

**Date of Decision : 24/07/2024**

**FINAL ORDER NO. 56048/2024**

**P. V. SUBBA RAO:**

We have heard Shri Alok Agarwal and Shri Prachit Mahajan learned Counsel for the appellant and Shri M R Dhaniya, learned Authorized Representative appearing for the Revenue and perused the records of the case.

2. M/s. Flyover Cargo Pvt. Ltd.<sup>1</sup>, a licensed Customs Broker, is aggrieved by the order in original<sup>2</sup> dated 26.7.2023

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1. appellant
  2. impugned order

passed by the Commissioner, Customs (Airport and General), New Delhi revoking its Customs Broker Licence, under Regulations 14 & 18 read with Regulation 17 of Customs Brokers Licensing Regulations, 2018<sup>3</sup>, forfeiting its security deposit and imposing a penalty of Rs. 50,000 on it for violating Regulation 10(d) of CBLR.

3. The appellant filed Shipping Bill No. 1312498 dated 11.5.2022 for the client M/s. RPM Exim Private Ltd.<sup>4</sup> to export certain goods. These included 500 grams of Triethanolamine valued at USD 4.06 (FOB) to Mozambique.

4. Triethanolamine is one of the Specialised Chemicals, Organisms, Machinery, Equipment and Technology (SCOMET) items which have dual use- several normal industrial or other uses and also use in manufacture of Weapons of Mass Destruction (WMD). Export of such SCOMET items is not prohibited but is restricted under the Foreign Trade Policy and they are listed in Appendix 3 to Schedule 2 of ITC (HS) classification. List 1C of this Schedule lists chemicals whose export requires an export authorisation if they are exported to countries other than those listed in Table 1. Undisputedly, Triethanolamine is listed at S. No. 17 of the list as SCOMET Entry IC017 and Mozambique was not listed in Table 1. Therefore, the undisputed legal position is that during the relevant period, Triethanolamine could not have been exported

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**3. CBLR, 2018**

**4. Exporter**

to Mozambique without an authorisation and the exporter had no authorisation.

5. It is also undisputed that the appellant filed the shipping bill for the exporter who attempted to export Triethanolamine to Mozambique without the required authorisation. The goods were seized and the matter was adjudicated by Order-in-Original dated 27.7.2022 passed by the Assistant Commissioner whereby he confiscated the Triethanolamine but allowed it to be redeemed on payment of a fine and taken "back to town" by the exporter. He also imposed penalty of Rs. 5,000/- each on the exporter and the appellant (customs broker) under section 114 (i) of the Customs Act, 1962<sup>5</sup>.

6. Thereafter, proceedings under CBLR, 2018 were commenced as it was felt that the appellant had violated Regulation 10(d) by not advising the exporter about the requirement to obtain an authorisation before exporting Triethanolamine. This Regulation reads as follows:

**10. Obligations of Customs Broker-** A Customs Broker shall-

....

(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;

7. After issuing a show cause notice, appointing an inquiry officer and considering the inquiry report and the

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**5. Act**

representation by the appellant, the Commissioner passed the impugned order holding that the appellant had violated Regulation 10(d) of CBLR 2018 and therefore, revoked the Customs Brokers' licence, forfeited the security deposit and imposed a fine of Rs. 50,000/-.

8. Learned counsel for the appellant made the following submissions:

- a) There was no *mens rea* and the Triethanolamine was covered by the exporter's undertaking which stated that it was not a SCOMET item and that it would be used for soil testing;
- b) The appellant was never investigated and no adverse evidence is taken on record by the department against it;
- c) The value of Triethanolamine was less than Rs. 500/-
- d) The SCN was issued after 255 days of receiving the offence report;
- e) The case was already adjudicated by the Assistant Commissioner and a penalty under Section 114 of the Act was imposed;
- f) The impugned order may therefore be set aside and the appeal may be allowed.

9. Learned authorised representative for the Revenue supports the impugned order and asserts that it calls for no interference.

10. We have considered the submissions advanced from both sides and perused the records.

11. The issues to be decided in this case are:

- a) Did the appellant violate Regulation 10(d) of CBLR?
- b) Is the SCN time-barred as asserted by the learned counsel for the appellant?
- c) If the appellant violated Regulation 10(d), is the penalty of revocation of licence, forfeiture of security deposit and imposition of penalty of Rs. 50,000/- upon the appellant proportionate to the violation?

12. Regulation 10(d) requires the Customs Broker to 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, to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Needless to say, that the Customs Broker is expected to be familiar with the provisions of the Customs Act and other allied Acts, Rules and Regulations insofar as the imports and exports are concerned. The customs broker, in particular, is expected to be familiar with the restrictions and prohibitions on imports and exports under any law and advise the client about them.

13. The restriction on export in this case is evident as it was part of the Foreign Trade Policy and export of Triethanolamine to Mozambique required an authorization. When the client wanted to export this chemical to Mozambique, it was the

obligation of the appellant under Regulation 10 (d) to advise the client about the requirement of authorization. Instead of advising the client, the appellant filed the Shipping Bill for its export.

14. The appellant's submission on this count is that the client had given a declaration that Triethanolamine is not a SCOMET item and had also given a declaration that it was being exported for use in soil testing. This submission cannot be accepted. Firstly, it is the appellant who should know the law and advise the client and the appellant cannot depend on the client to say if Triethanolamine was a SCOMET item or not. If the appellant had checked the list of SCOMET items, it would have been evident that it was clearly a SCOMET item. Secondly, any declaration by the client cannot prevail over the law.

15. Thus, we find that the appellant had clearly violated Regulation 10(d) of CBLR 2018.

16. Another submission of the appellant is that the SCN was issued 255 days after the receipt of the offence report and hence it was time-barred.

17. We have considered this submission. The Commissioner can be expected to act after he receives the offence report and not before. The Commissioner recorded in paragraph 19 of the impugned order that the offence report in the form of the Order in Original dated 27.7.2022 was received in his office on

29.7.2022 but it contained the name of another Customs Broker and the not of the appellant who was the Customs broker who had handled the consignment. Needless to say that the Commissioner could not have proceeded against the appellant at that stage when the offence report did not name the appellant at all. So, a clarification was sought by letter dated 8.8.2022 which was followed by a reminder on 4.11.2022. Thereafter, the Assistant Commissioner issued a corrigendum dated 17.11.2022 indicating the correct name of the Customs Broker which was the appellant. This corrigendum was received by the Commissioner on 18.11.2022 and the SCN under CBLR 2018 was issued on 6.2.2023, i.e., within 80 days of the receipt of the correct offence report. We, therefore, find the submission of the appellant that the SCN was issued after 255 days of receiving the Offence Report contrary to facts recorded in the impugned order. The SCN was, therefore, not time-barred.

18. On the question of proportionality of action against the appellant, we find an attempt to export SCOMET item without the required authorization is a serious violation. In this case, it cannot even be said to be a mere oversight because the exporter had given a declaration stating that it was not a SCOMET item and therefore, the possibility of it being a SCOMET item was evident- all that the appellant had to do was to refer the policy where Triethanolamine was explicitly indicated as a SCOMET item. He should then have advised the exporter accordingly.

19. On the other hand, there is no evidence of the appellant profiting from this attempted export of Triethanolamine valued at about Rs. 500/. Action has been taken against both the exporter and the appellant under the provisions of Customs Act and penalty of Rs. 5,000/- was imposed on the appellant under section 114(i). The appellant has been without a licence since 26.7.2023 which means out of work for about an year.

20. Balance of consideration, we find it would meet the ends of justice if the penalty of Rs. 50,000/-imposed on the appellant is upheld but the revocation of licence and forfeiture of security deposit are set aside.

21. The appeal is partly allowed and the revocation of licence and forfeiture of security deposit of the appellant in the impugned order are set aside but imposition of penalty on the appellant is upheld. The appellant shall be entitled to consequential relief.

(Order pronounced in court on 24.07.2024)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

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