

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 55801 OF 2023

[Arising out of the Order-in-Original No. 68/ZR/POLICY/2023 dated 16/10/2013 passed by Commissioner of Customs (Airport & General), New Delhi – 110 037.]

M/s Pushpanjali Logistics,
Block M RZ – 81B, Chanakya Place,
Part – II, Opp. C-1, Janak Puri,
New Delhi – 110 059.

.....Appellant

Versus

**Commissioner of Customs
(Airport & General)**
New Customs House, Near IGI Airport,
New Delhi – 110 037.

....Respondent

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant.
Shri Munshi Ram Dhanial, Authorized Representative for the
Department

CORAM:

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

FINAL ORDER NO. 55892/2024

DATE OF HEARING : 29.04.2024

DATE OF DECISION: 04.06.2024

P.V. SUBBA RAO

We have heard Ms. Priyanka Goel, learned counsel for the appellant and Shri Munshi Ram Dhanial, learned authorized representative appearing for the Revenue and perused the records of the case.

2. M/s Pushpanjali Logistics¹, a licensed Customs Broker, is aggrieved by the order-in-original² dated 16.10.2023 passed by the Commissioner of Customs (Airport and General), New Delhi revoking its Customs Broker Licence, under Regulations 14 & 18 read with Regulation 17(7) of Customs Brokers Licensing Regulations³, 2018, forfeiting its security deposit and imposing a penalty of Rs. 50,000. The operative part of the impugned order is as follows:

“25. Accordingly, 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

- (i) I hereby revoke CB License No. R-55/DEL.CUS/2006 (PAN AAHPC2938G) valid up to 31.05.2028 of M/s. Pushpanjali Logistics;
- (ii) I direct the CB to immediately surrender the original CB Licence No. R-55/DEL/CUS/2006 (PAN AAHPC2938G) valid up to 31.5.2028 along with all 'F/G/H cards issued thereunder;
- (iii) I order **for forfeiture of the amount of security deposit** furnished by them;
- (iv) I **impose penalty of Rs. 50,000/-** on M/s Pushpanjali Logistics (PAN AAHPC2938G) under Regulation 18 of CBLR 2018.

26. 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 lead up to the issue of this order is that the Directorate General of Analytics and Risk

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1. appellant
 2. impugned order
 3. CBLR

Management⁴ of the Central Board of Indirect taxes and Customs analysed data and identified risky exporters involved in 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 appellant herein.

4. The Commissioner issued a show cause notice⁵ dated 25.4.2023 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 on 21.7.2023. The concluding paragraph of the inquiry report is as follows:

"6.2 In view of the foregoing, I conclude that CB M/s Pushpanjali Logistics had not complied with the obligations cast on him under Regulation 10(d), (e) &(n) of CBLR, 2018 as alleged in the SCN and liable for appropriate action under the provisions of Customs Brokers Licensing Regulations, 2018.

5. Thus, the Inquiry officer found that the charge in the show cause notice that the appellant violated Regulations 10(d), 10(e) and 10(n) of CBLR, 2018 was established. A copy of the inquiry report was served on the appellant, who

4. DGARM
5. SCN

submitted a written representation dated 29.9.2023 to the Commissioner.

6. After considering the SCN, the inquiry report and the representation, the Commissioner passed the impugned order holding that the appellant had violated Regulations 10(d) and 10(n) of CBLR 2018 but there is no evidence of violation of Regulation 10(e). He revoked its Customs Brokers' licence, forfeited the security deposit and imposed a fine of Rs. 50,000/- on it.

7. 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 Regulations 10(d) and 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 Regulations 10(d) and 10 (n)

8. The allegation in the show cause notice and the finding in the impugned order that the appellant had violated Regulations 10(d) and (n) is based on the fact that the appellant had filed 2 shipping Bills in the name of M/s Arise Enterprises⁶ (of which one was purged by the system because no goods were brought for export within time) and ready-made garments were exported against the shipping Bill declaring high values to claim undue export benefits. The Additional Commissioner of Customs Mundra, had passed Order in Original dated 7.7.2023 wherein he held that on verification, Arise was found to be non-existent. Based on this order of the Additional Commissioner, Mundra that Arise did not exist, the Commissioner concluded that the appellant, who filed the Shipping Bill for Arise, had violated Regulations 10(d) and (n) of CBLR, 2018.

9. Regulation 10(d) 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;

10. The Commissioner recorded that the exporter Arise was found to be non-existent on verification. The rent agreement

6. Arise

uploaded by it on the GST Portal was found to be forged and as the owner of the premises denied having signed any such agreement. Therefore, the exporter as well as his supply chain were fake. The GST registration of the exporter was cancelled suo moto by the department.

11. In the impugned order, the Commissioner recorded his agreement with the inquiry officer that on examining the profile of the exporter itself, the exporter appears suspicious as it was in the business of footwear and suddenly after taking a new registration started dealing in readymade garments from a new address as both these commodities come under inverted duty structure where the exporter can claim refund of accumulated Input Tax Credit (ITC) under Rule 89(5) of the Central Goods and Services Tax Rules, 2017. On the basis of these findings, the Commissioner concluded that Customs Broker had failed to advise his client to comply with the provisions of the Act and other allied Acts and the Rules and Regulations thereof and in case of non-compliance, bring it to the notice of the Deputy Commissioner and thereby he had violated Regulation 10(d).

12. Learned counsel submits that the appellant, as the Customs broker, had no responsibility with respect to the registration of the exporter under GST or the documents submitted or uploaded by the exporter in order to obtain the GST registration. The responsibility of the appellant under

regulation 10(d) can only be related to the export or imports which it handled. She also submitted that nothing in the SCN or in the impugned order establishes that the appellant had not advised its client, the exporter, to comply with the law or that it was aware that the exporter had not complied with any law and had still not brought it to the notice of the Assistant Commissioner or Deputy Commissioner.

13. Learned authorised representative vehemently supported the impugned order.

14. We have considered the arguments advanced by both sides and the findings of the impugned order.

15. In the impugned order the Commissioner held that the appellant had violated regulation 10(d) for the following reasons:

- a) Arise, the exporter, on whose behalf the appellant had filed the shipping bill was found to be non-existent;
- b) The profile of Arise itself was suspicious because it was usually engaged in the business of footwear and had obtained a new GST registration for garments ostensibly to avail undue export benefits;
- c) Even the rent agreement uploaded by Arise on the GST portal to obtain the registration was found to be fake; and
- d) On verification, Arise was found to be non-existent and therefore, its GST registration was cancelled.

16. We find that no inference can be drawn from the above that the appellant had not advised Arise to comply with the provisions of the Customs Act or other allied Acts or rules or

regulations or that it was aware of the violation of any Acts or Rules by Arise and had not brought it to the notice of the Assistant Commissioner or Deputy Commissioner.

17. In fact, the appellant, as the Customs Broker, had neither any role or authority or responsibility with respect to the GST registration of Arise. It is between Arise which had applied for the GST registration and the officer who issued the registration. If the entity was non-existent and the officer issued a benami GST registration to a non-existent entity, the responsibility for that rests squarely on the officer who issued such registration and the entity which applied for and obtained such benami registration. Once a GST registration is issued by the department, the appellant had no choice but to accept it.

18. The appellant had no authority to sit in judgment over the GST registration issued by the department. Neither the fact that benami registration was issued by the officer nor that it was subsequently cancelled ab initio makes any difference. The appellant, as the Customs Broker, had no choice but to assume that what was done by the department was correct and proceed.

19. It also needs to be noted that Regulation 10(d) which requires the Customs Broker to advise its client can only be interpreted with respect to the imports or exports of the client with which it was dealing- whether it is Customs Act, Rules and Regulations or other allied Acts. The Customs broker has no

responsibility to either advise its clients about compliance with any other law or compliance with respect to any other import or export consignment which it was not dealing with.

20. The appellant had clearly not violated Regulation 10(d).

21. 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.*

22. The Commissioner considered the appellant's submission that it had obtained KYC documents viz., importer exporter code (IEC), PAN card, Aadhar Card, authorisation and verification certificates issued by the Bank before filing the Shipping Bill and that it had verified the GSTIN from the GST website. He found that GST website is an open source and the claim of verification of the GST registration does not hold ground.

23. He further observed that the exporter usually dealt with in footwear and had applied for a new registration for export of garments using the same PAN but declaring a different address. He also observed that two registrations cannot be issued for the same PAN. On verification, the exporter was

found to be non-existent and the GST registration was cancelled. It was a dummy firm created with the sole intention of filing incorrect shipping bills with higher valuation of goods to avail undue export benefits. The appellant, as the Customs Broker, was supposed to safeguard the interests of both the importers/exporters and the department and the appellant failed to do so. For all these reasons, he held that the appellant had violated Regulation 10(n).

24. Learned counsel for the appellant relied on several orders of this Tribunal on similar revocation of Customs Brokers' licences where the exporters had valid GST registrations issued by the GST officers and IEC issued by the Directorate General of Foreign Trade but after export, on verification by the department, the exporters were found to be non-existent. In such cases, it was held that there was no violation of Regulation 10(n). She prayed that this case being identical to these cases, the revocation of licence, forfeiture of security deposit and the penalty imposed may be set aside.

25. Learned authorised representative for the Revenue vehemently supported the impugned order.

26. We have considered the submissions. The responsibility under Regulation 10 (n) 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 **Kunal Travels⁷** 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).”**

27. 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 officers and it does not lie with the Customs broker.

28. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, by

6. 2017 (3) TMI 1494- Delhi High Court

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 exporter was not available at the registered premises on the date of export or if it ceased to operate after the export. Even if the exporter had changed its addresses and failed to intimate, it cannot be held against the Customs Broker.

29. 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

30. 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 does it mean that 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 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. Therefore, the appellant was correct in verifying the GSTIN issued by the department on the GST portal. 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."

31. 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.

32. 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

33. 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 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).

34. 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, IEC issued by the DGFT also shows 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.

35. 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.

36. We, therefore, find that the appellant Customs Broker did not fail in discharging its responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the Customs Broker has violated Regulation 10(n) because the exporter was found to not exist during subsequent verification by the officers.

37. In view of the above, we proceed to answer the questions framed by us in paragraph 6 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 had violated Regulations 10 (d) and 10(n) of CBLR, 2018. Consequently, the answer to questions (b), (c) and (d) are in the negative.

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

(Order pronounced in open court on 04/06/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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