

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 52237 OF 2022

[Arising out of Order-in-Original No. 18/ZR/POLICY/2022 dated 04.04.2022 passed by the Commissioner of Customs (Airport & General), New Delhi]

Uniyal Cargo Movers Pvt Ltd

Plot No.52-C, 3rd Floor,
Krishna Complex, Hasanpur,
I.P.Extention, New Delhi-110092

Appellant

Vs.

**Commissioner of Customs
(Airport & General), New Delhi**

New Custom House, Near IGI Airport,
New Delhi- 110037

Respondent

Appearance:

Present for the Appellant :Ms. Reena Rawat, Advocate

Present for the Respondent: Shri Rajesh Singh, Authorised Representative

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:13.12.2024

Date of Hearing:09.04.2025

FINAL ORDER No.50473/2025

HEMAMBIKA R. PRIYA

The present appeal is being preferred by M/s. Uniyal Cargo Movers Pvt. Ltd. against Order-in-Original No. 18/ZR/Policy/2022/ dated 04.04.2022 passed by the Commissioner of Customs (Airport & General), New Custom House, New Delhi, wherein the license of the

Appellant was revoked, the security deposit was forfeited and penalty of Rs. 50,000/- was imposed.

2. The brief facts of the case are that the appellant is a Customs Broker engaged in the clearance of import and export of goods. The Appellant filed two S/Bs both dated 22.12.2020 of M/s Shree Shyam Traders and another two S/Bs dated 22.12.2020 of M/s Shine Impex (hereinafter cumulatively called as Exporters) at ICD, Tughlakabad.

3. During the course of examination, the department found that the exporters had mis-declared the quantity and value of the goods, in order to avail higher amount of drawback and other incidental export benefits. Qua M/s Shree Shyam Traders, the quantity found was 62231 sq. ft. as against the declared quantity of 1,00,000 sq. ft. In respect of M/s Shine Impex, 40089.92 sq. ft. was found as against declared quantity of 1,20,000 sq. ft. Both the Exporters were found to be non-existent. On completion of the inquiry, Show Cause Notices both dated 30.07.2021 were issued to the Exporters and Appellant. Taking note of the said Show Cause Notice ibid to be an Offence Report, the Appellant's license was suspended by the Commissioner on the allegation that Appellant had transacted the instant business neither personally nor through an authorized employee; Appellant did not advise the Exporters to comply with the provisions of Customs Act, 1962 and Rules and Regulations made there under; that Appellant did not exercise due diligence to ascertain the correctness of information which he imparted to the Exporters, that Appellant did not verify to the correctness of Importer Exporter Code Nos., GSTINs, identity of the

Exporters and functioning thereof at the declared addresses and that, Appellant did not co-operate with the Customs authorities.

4. Thereafter, a Show Cause Notice No.26/ZR/POLICY/2021 dated 02.11.2021 under Regulation 17 of the Customs Broker Licensing Regulation, 2018 proposing revocation of Appellant's License for alleged violation of provisions of Regulation 10(a), 10(b), 10(d), 10(e), 10(m) & 10(n) of Customs Broker Licensing Regulation. Vide the impugned order, the Commissioner confirmed the violation of Regulations 10(a), 10(b) & 10(n) of the Regulations.

5. Learned counsel submitted that the appellant had not violated the provisions of Regulations 10(a) of CBLR, 2018 in as much as prior to accepting the assignment, they had duly taken Authority Letters / Authorisations from the aforesaid exporters and same were not found to be fraud or fabricated. As regards violation of Regulation 10(d), learned counsel submitted that before filing the S/B, they were not aware about misdeclaration by the exporter or alleged non-existent of the exporter, if any and therefore they could not report the matter to the Deputy Commissioner of Customs. Learned counsel further stated that they were not in contact with the exporters. In fact, it was Shri Ram Pratap, a freight forwarder, who had brought the client to appellant on commission basis. As the appellant knew Shri Ram Pratap Yadav over a long time, the appellant did not suspect Shri Ram Pratap or the clients who came with his reference.

6. Learned counsel further submitted that as regards violation of Regulation 10(n), the Appellant in both the cases, had duly taken the KYC documents prior to filing of the S/Bs and which had been verified.

The existence of the exporters was verified by online verification of IEC, GST and PAN from their respective websites. As regards the contention of the Department that the appellant had obtained only one KYC document i.e. PAN and failed to obtain other documents he stated that Circular No. 9/2010 dated 08.04.2010 provided the list/details of documents to be taken in case of individual i.e. proprietorship firm and as per Circular No. 2/2018, Aadhar Card had also been added as one of the document of identity and address.

7. The learned counsel also stated that the addresses of the exporters were found to be genuine but in case of Shri Shyam Traders, Shri Ravi Dutt Sharma, proprietor of the firm was found unavailable at the aforesaid address. His family members had informed that Ravi Dutt Sharma had left the residence 02 years ago and they do not know anything about his whereabouts. As regards verification of address of Shri Lucky Sharma, proprietor of M/s Shine Impex, the address was found to be correct but Shri Lucky Sharma stated that he had nothing to do with M/s Shine Impex. The learned counsel relied on the following decisions wherein in identical circumstances, the revocation of Customs Broker license had been set aside.

(i) Perfect Cargo & Logistics vs. Commissioner of Customs (Airport & General), New Delhi¹.

(ii) FLE Fast Line Express Pvt Ltd. vs. Commissioner of Customs (Air Cargo & Export), New Delhi².

1. 2021(376)ELT649(Tri Del)

2. 2021(378)ELT361(Tri Del)

(iii) **Mohak Enterprises vs. Commissioner of Customs, Ahmedabad³.**

(iv) **Commissioner of Customs vs. Shiva Khurana⁴.**

Learned counsel went on to state that the revocation of license will render the Appellant without any work. He further submitted that the Custom Broker license had been suspended since August 2021 and the appellant was without work for the past 03 years. He had lost his livelihood.

8. Learned Authorized Representative for the Department stated that the investigation by the Customs Preventive Office revealed that the exporters M/s Shree Shyam Traders and M/s Shine Impex were non-existent at their registered address and no person ever came forward to claim the ownership of the seized goods. The authenticity of authorization produced by the appellant were considered to be doubtful as during the investigation, it came to fore that one Sh. Ram Pratap was in touch with one of the exporters and Sh. Ram Pratap entered into verbal agreement with the Customs Broker for clearance of the goods for export. There is no record of the CB interacting with the exporters as per the investigation conducted by Customs (Preventive). Thus, the claim of the appellant regarding obtaining authorisation from the exporters cannot be accepted.

9. Learned authorized representative further submitted that the goods covered under all the four shipping bills were examined by officers of Customs Preventive in presence of Sh. Ashok Kumar Solanki

3. (2024)15 Centax 536 (Tri Ahmd)

4. 2019(367)ELT 550(Del)

(G-Card holder of the appellant) and two independent witnesses and proceedings undertaken were recorded in Panchnamas dated 04.01.2021/ 31.12.2020 drawn on the spot. The goods attempted for export were found to be highly over valued and misdeclared in respect of quantity to claim undue export benefits and therefore were detained/seized under Section 110 of Customs Act, 1962. As all the proceedings were held before the authorised person, i.e. G card holder of the appellant and further both the exporters were found to be non-existent at their registered address and no person ever came forward to claim the ownership of the seized goods, the referred judgments by the appellant are not applicable in this case. Regarding non acknowledgement of the Authorisation letters produced by the appellant by the Customs Authority i.e. ICD (Export), Tughlakabad, New Delhi, learned authorized representative stated that it is an admitted fact that the Authorisation produced by the appellant were not acknowledged by the Customs officers and further as both the exporters were found to be non-existent/non related with the export consignments, the question of obtaining authorisation by the appellant from the declared exporters did not arise. Learned authorized representative contended that the appellant failed to fulfil his basic function as a Customs Broker to verify the existence and functioning of his clients. Shree Shyam Traders, one of the exporters, had contacted Shri Ram Pratap, a commission agent for customs clearance work. Thereafter, the said Shri Ram Pratap entered into a verbal agreement with the Customs Broker for customs clearance on commission basis. The KYC and other documents were also received by the Customs Broker through Shri Ram Pratap only without any interaction between

the Customs Broker and the exporters. Further, M/s Shree Shyam Traders was found to be non-existent whereas the Proprietor of M/s Shine Impex stated that he had nothing to do with M/s Shine Impex. As such, the question of advising "the client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, bringing the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be" does not arise. Therefore, the adjudicating authority has rightly concluded that the appellant had failed to comply with the obligations under regulation 10(d) of the CBLR, 2018. In support of his submission, Id. AR relied upon the following decisions:-

- Commissioner of Customs vs. K.M. Gantra & Co. in Civil Appeal No. 2940 of 2008
- Baraskar Brothers vs. Commissioner of Customs (General), Mumbai 2009 (244) ELT 562

10. Learned authorized representative further contended that the appellant had procured other documents viz. IEC, GST registration, Aadhar, letter from the bank etc., which were not prescribed under the Circular 09/2010-Customs dated 08.04.2010, to establish the address & identity proof of the exporters. Consequently, the appellant had failed to fulfill the obligation cast upon him in terms of provisions laid down under Regulation 10(n) of CBLR, 2018 read with the said Circular. In para 5.4.3 of Show Cause Notice, also, the Adjudicating Authority observed that the CB had only partially complied with the provisions of Regulation 10(n). Since Regulation 10(n) is a substantive

Regulation and a mandatory compliance requirement, therefore partial compliance is not adequate. Accordingly, the Adjudicating Authority held that the appellant, M/s Uniyal Cargo Movers Pvt. Ltd, had contravened the provisions of Regulation 10(n) of the CBLR, 2018 read with the Circular 09/2010-Customs dated 08.04.2010, by not providing the requisite number of KYC documents. Further, the appellant had not properly verified the functioning of the clients at the declared address by using reliable independent and authenticated documents. This was a serious lapse on part of the CHA in verifying the KYC before taking up the Customs clearance of consignment of export of "other Textile material of 70% polyester and 30% PVC blind fabric rolls for Curtains". The appellants, considering the nature of the export goods should have exercised more vigilant approach before taking up the consignment for Customs clearance after verification of KYC norms of the exporters, which was not done in this case. As the appellant has facilitated highly over valued and misdeclared export of non-existent exporters, putting Govt revenue at stake, the penalty imposed upon the appellant is just and proper.

11. We have heard the learned Counsel for the appellant, the learned AR for the Department and perused the records. The issue before us is whether the revocation of the CB license of the appellant is correct or not. We note that that the impugned order has revoked the CB license for violations of the CBLR, 2018 provisions.

12. Before we proceed, it would be appropriate to reproduce the said regulations for ease of reference:

"10. Obligations of Customs Broker.—A Customs Broker shall
— (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;

.....

(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;

.....

(n) 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;”

13. We find that the adjudicating authority has held that even though the appellant had procured the authorisation letters of the exporters, they were not obtained from the exporters directly by the appellant. It has been accepted by the Ld Counsel that the appellant did not meet the exporter but the documents were received through Sh. Ram Pratap, who was the appellant’s friend, and acquainted with one of the exporters. Rule 10(a) does not cast any responsibility on the appellant CB to obtain the authorisation from the exporter directly. It only requires the appellant to have the authorisation from the firm/company etc, which was available with the appellant. Therefore, we hold that the violation of 10(a) cannot be upheld.

13.1 Rule 10(d) casts responsibility on the appellant CB to advise his client to comply with the provisions of the Customs Act and Rules/Regulations thereunder. The adjudicating authority has held that the KYC documents were obtained by the appellant CB through Sh Ram Pratap and as the exporters were not found existent in their declared address, hence the appellant had violated Rule 10(d). This

cannot be accepted. The appellant CB cannot be held responsible for the actions of the exporters. It is an admitted fact that the goods were found to be less in quantity as well as they were valued much higher than its cost. This was clearly an attempt by the exporters to defraud the Government by claiming higher drawback, but the actions were purely of the exporters. The department has not been able to lead any evidence of any active collusion by the appellant or any evidence of the appellant CB having advised the exporters or assisted them in their activity. Consequently, we are unable to agree with the conclusions reached by the adjudicating authority.

14. 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. As per the Regulation, this identity can be established by independent, reliable, authentic: a) documents; b) data; or c) information. Any of these methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that the appellant CB has to only conduct a physical verification or launch an investigation. As long as the appellant CB can find documents which are independent, reliable and authentic to establish the identity of his client, this obligation is fulfilled. In addition, under Regulation 10(n) the Customs Broker is required 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 they are 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. We also note that there is nothing on record to show that either of these documents were fake or forged. Learned Counsel has submitted that the appellant had taken the KYC documents prior to filing of the Shipping Bills, which were verified online. He stated that Circular No. 9/2010 dated 08.04.2010 gave the list of documents acceptable for KYC purposes. In this context, he also contended that Aadhar as a KYC document had been added as list of documents vide the Circular no. 2/2018 in respect of proprietorship firm. To appreciate the submissions of the Ld Counsel, it is important to reproduce the relevant paras of the amending Circular 2/2018 dated 12.01.2018:-

"2. In line with the KYC norms stipulated by the Reserve Bank of India. Board had decided that two documents, one for proof of identity and other for proof of address are required for KYC verification. However, in case of individuals, if any one document listed in the Board Circular No. 9/2010-Cus dated 08.04.2010 contains both proof of identity and proof of addresses, the same would suffice for the purposes of KYC verification. **Aadhaar card had also been recognised as one of the document for individuals. Board had further relaxed KYC norms for individual, in view of the problem being faced by individuals who possess proof of identity in the form of prescribed document but their address of present stay is not mentioned in the proof of identity.** Moreover, many a times, it is difficult for individuals to produce present/current proof of address. For such cases, it was decided that proof of identity collected by the representative of the authorized courier at the time of delivery of such consignments to an individual consignee along with recording of address of the place where such consignments would be delivered to the consignee by the authorized courier companies, would suffice for KYC verification [Circular No. 13/2016-Customs dated 26.04.2016 refers). In order to bring in more clarity, in this regard. Board has decided that in case of import or export through courier by an individual, either Aadhaar card or Passport or PAN card or Voter-ID card shall suffice for KYC verification however recording of address of place of delivery, as mentioned above, would continue."

15. The above reproduction makes it clear that Aadhar was a relevant KYC document for proprietorship firms. Therefore, we are in agreement with the submissions of the appellant that Aadhar is an acceptable KYC document. It has been submitted before us that online verification was completed by the appellant. It has been submitted by the Department that the exporters were not found at the registered address, and no person came to claim the seized goods. There is no evidence that the appellant CB did not undertake verification of the KYC documents. We note that IEC and Aadhar/PAN card are issued by the Government departments. Therefore, any verification would be based on the copies of these documents submitted by the client/exporter, which can be verified independently online in the respective portals. The Department cannot expect the appellant/CB to be responsible to ensure the correctness of the actions of the Government Department which have issued these certificates. Consequently, verification of certificates as part of the obligation under Regulation 10(n) on the Customs Broker stands satisfied as long as it satisfies itself that the IEC and the Aadhar were issued by the concerned officers. We note that same view was taken in a similar case by this Tribunal in its decision in M/s Bright Clearing & Carrier Pvt Ltd., vs Commissioner of Customs (Airport & General) and Star Carriers vs Commissioner of Customs (Airport & General)⁵ has held as follows:

"7. 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 [DGFT] and the GSTIN is issued by the GST officers

under the CBIC or by officers of the Government of India or under the Governments of State or Union territory. The question which arises is whether the Customs broker is required to satisfy itself that these documents or their copies given by the client were, indeed issued by the concerned government officers OR is the Customs Broker also required to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) of CBLR cannot be read to mean the latter as it would imply treating the Customs Broker as one who is competent and responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that actions by the Customs Broker under the CBLR prevail over the actions by officers under the Foreign Trade (Development and Regulation) Act, 1992 (under which the IEC is issued by DGFT) and the Central Goods and Services Tax Act (or state GST Act) (under which the GSTIN is issued by the GST officers). In our view this is not a correct construction of the legal provision. Therefore, verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it 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 have been issued by an officer 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.

.....

80. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have issued the certificate or registration correctly. It has been held by the High Court of Delhi in the case of Kunal Travels [2017 (3) TMI 1494- Delhi High Court] 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).

Of course, if the Customs Broker comes to know that its client had 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 these cases, there is no doubt or evidence that the IEC and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned."

16. Therefore, once verification of the address is complete as discussed above, the responsibility cast on the appellant under Regulation 10(n) stands fulfilled. In this regard, we further note that the Principal Bench of this Tribunal in the case of **M/s Mauli Worldwide Logistics vs Commissioner of Customs (Airport & General)**⁶ held as follows:

"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."

17. Consequently, the submissions of the Department that the appellant CB violated Regulation 10(n) as the exporters were non-existent in their registered address subsequently cannot be accepted.

We also note that in a recent judgment of the High Court of Delhi in the case of **Naman Gupta vs Commissioner of Customs (A & G)**⁷ dated 30.01.2024 held as follows:

"20. It is thus evident from the legal position as enunciated in Kunal Travels (supra), Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in Kunal Travels (supra) held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client. As such, as a Customs Broker, the petitioner cannot be held W.P. (C)15808/2022 Page 22 of 22 liable because exporters were not traceable, after the issuance of "Let Export Orders" and export of the goods out of the country."

18. Consequently, we hold that there the revocation of the CB license and the forfeiture of security deposit cannot be sustained.

19. We now address the submissions on the penalty of Rs 50000/- imposed by the adjudicating authority. In this context, we note that once the goods were seized by the Department, the said exporters did not come forward to claim the goods. It is a matter of concern is that when the goods were seized, no one came forward to claim the said goods, clearly evidencing the attempt of the exporters to defraud the government. This should have been a warning to the appellant CB that the export goods obviously did not belong to the exporters on paper. Though there is no collusion of the appellant CB in the attempt of the exporters to defraud the Government, the appellant CB plays a crucial role in international trade. The CB has an obligation as the appointed

7. W.P. (C) 15808/2022

agent to transact Customs formalities and is responsible for their clients. Therefore, we hold that the appellant is liable for penalty.

20. In view of the above discussions, we hold as follows:

- (i) The revocation of CB license is set aside
- (ii) The forfeiture of security deposit is set aside.
- (iii) The penalty of Rs 50,000/- imposed on the appellant is reduced to Rs 25, 000/-

21. Consequently, the appeal is allowed partially and the impugned order is modified to the extent indicated above.

(Order pronounced in the open court on **09.04.2025**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)