

**2022 (8) TMI 181 - CESTAT NEW DELHI
M/S S. PRAKSAH KUSHWAHA & CO. VERSUS COMMISSIONER OF CUSTOMS
(AIRPORT & GENERAL) , NEW DELHI**

Revocation of Customs Broker License - forfeiture of security deposit - levy of penalty on Customs Broker - allegation of violation of Regulation 10(n) of CBLR 2018 on the ground that DGARM has reported that some of the exporters whose exports the Customs Broker had handled did not exist at the premises - HELD THAT:- 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, 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 - 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. The Commissioner was not correct in holding that the appellant Customs Broker has violated Regulation 10(n) of CBLR, 2018 - Appeal allowed - decided in favor of appellant.

No.- Customs Appeal No. 51659 of 2021

Order No.- FINAL ORDER No.50660/2022

Dated.- July 22, 2022

Citations:

1. [Kunal Travels \(Cargo\) Versus Commissioner Of Customs \(Import & General\) New Customs House, IGI Airport, New Delhi - 2017 \(3\) TMI 1494 - DELHI HIGH COURT](#)
2. [MAULI WORLDWIDE LOGISTICS Versus COMMISSIONER, CUSTOMS- NEW DELHI \(AIRPORT AND GENERAL\) - 2022 \(7\) TMI 368 - CESTAT NEW DELHI](#)
3. [M/s Perfect Cargo & Logistics Versus Commissioner of Customs, New Delhi \(Airport and General\) - 2022 \(4\) TMI 1005 - CESTAT NEW DELHI](#)
4. [M/s Anax Air Services Pvt. Limited Versus Commissioner of Customs, New Delhi \(Airport and General\) - 2022 \(1\) TMI 115 - CESTAT NEW DELHI](#)
5. [Commissioner of Customs, New Delhi \(Airport and General\) Commissionerate Versus M/s CRM Logistics Private Limited \(Vice-Versa\) - 2021 \(12\) TMI 253 - CESTAT NEW DELHI](#)

**MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL) AND DR. RACHNA
GUPTA, MEMBER (JUDICIAL)**

Ms. Reena Rawat, Advocate - for the Appellant

Shri Nagendra Yadav, Authorised Representative for the Respondent

ORDER

We have heard learned Counsel for the appellant and learned Authorized Representative appearing for the Revenue and perused the records of the case. Both sides agree that this case is similar to the cases of Mauli Worldwide Logistics (C/50997/2021) and other cases in which Customs Brokers licenses were revoked by the Commissioner alleging violation of Regulation 10(n) of CBLR 2018 on the ground that DGARM has reported that some of the exporters whose exports the Customs Broker had handled did not exist at the premises.

2. M/s. S Prakash Kushwaha [**Appellant**], a licensed Customs Broker, is aggrieved by the order in original [**Impugned order**] dated 10.6.2021 passed by the Commissioner, Customs-New Delhi (Airport and General), New Delhi revoking its Customs Broker Licence, under Regulation 14 read with Regulation 17 & 18 of the Customs Brokers Licensing Regulations [**CBLR**], 2018, forfeiting its security deposit of Rs. 5,00,000 and imposing a penalty of Rs. 50,000. The operative part of the impugned order is as follows:

“30. In exercise of powers conferred in terms of Regulation 14 read with Regular 17 & 18 of CBLR, 2018

(i) I hereby revoke the CB License No. R-57/DEL/CUS/2015 (PAN: DNTPK4126E) valid upto 20.03.2025 issued to M/s S. Prakash Kushwaha & Co.

(ii) I direct the CB to immediately surrender the Original CB License No. R-57/DEL/CUS/2015 (PAN: DNTPK4126E) alongwith all F, G and H Cards issued thereunder.

(iii) I order for forfeiture of the whole amount of security deposit of Rs. 5,00,000/- (Rs. Five Lakhs only) furnished by them.

(iv) I impose penalty of Rs.50,000/- on M/s Prakash Kushwaha & Co.”

31. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(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”.

3. The factual matrix which lead up to the issue of this order is that the Directorate General of Analytics and Risk Management [**DGARM**] of the Central Board of Indirect taxes and Customs analysed the data and identified risky exporters involved in execution of frauds and got 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 Notice [**SCN**] dated 23.12.2020 to the appellant and appointed an Inquiry officer, who submitted his Inquiry Report the concluding paragraph of which is as follows:

“ 31. In view of the above, I find from the above stated facts that it is evident that M/s. S. Prakash Kushwaha &Co., 420, GF, Mukherjee Nagar New Delhi 110009, have failed to comply with the provisions of regulations 10(n) of CBLR, 2018 to some extent. However, I am of the view that a lenient view may be taken in the matter.”

4. After following due process, the Commissioner passed the impugned order.

5. 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?

6. Although both the show cause notice and the impugned order listed 15 suspected exporters whose exports the appellant had handled and who are said to be untraceable, the only report which was presented as evidence was in respect of one exporter M/s Advit Enterprises (07ABKFA5464D1ZI). Paragraph 6 of the SCN reads as follows:

“6. Whereas, as a result of physical verification for identification of Risky Exporter by the field formations of the following exporters has been received in some case which is elaborated below.

(i) M/S ADVIT ENTERPRISES (07ABKFA5464D1ZI):

Remarks of jurisdictional officer (RUD-2):

Exporter is not bonafide.

Similar adverse report/comments had been given by the jurisdictional authorities in respect of all the exporters mentioned in the above Table-I.

7. There are only two Relied upon documents to the SCN- RUD 1 is an email dated August 17,2020 sent by Deepna Singh, Joint Director, DGARM to the Commissioner stating that 62 Customs Brokers handled consignments for multiple untraceable exporters. RUD 2 is the verification report in respect of Advit Enterprises. In respect of the remaining 14 suspected exporters, no documents by way of evidence was presented either in the SCN or before us. With respect to the remaining 14 suspected exporters, there is nothing in the SCN except the last sentence of paragraph 6 of the SCN reproduced above stating that adverse reports/comments have been given by the jurisdictional authorities which is only an allegation and not evidence in any sense of the term. What remains to be seen is whether based on the sole verification report whether the allegation of violation of Regulation 10(n) of CBLR by the appellant can be sustained or otherwise. The verification report does not mention the name of the exporter but only mentions that GSTIN 07ABKPA5464D1Z. The relevant parts of this report are as follows:

“A. Physical verification of the Principal Place(s) of Business: PV done by the officers of the GST Audit-I Commissionerate, Delhi

Address of the Principal place of business: LGF Pvt. Shop No. 9, plot no. 54, part of prop No. XVI/10670, Block 4 WEA Karolbagh, New Delhi

.....

As the assessee was found non-existent and there is a huge variation between inward supplies and outward supplies in terms of E-way bills scrutiny, therefore, the assessee in pursuance of CBIC Circular No. 131/1/2020-GST dated 23.01.2020 is non bonafide.

Signed by Assistant Commissioner, CGST Audit-I, Delhi
Recommendation about the bonafide of the verified:

Verification Report of the issue has been submitted by the concerned team with a conclusion of non-bonafide.

This has been found correct and further endorsed by the supervisory AC.

The joint Commissioner has also affirmed the Report.

Thus, the non-bonafide is verified.

Signed by the Principal Commissioner/ Commissioner

8. Learned counsel for the appellant submitted that the impugned order is not sustainable and that in similar matters where licences were cancelled alleging violation of Regulation 10(n) by the Customs Brokers based on similar reports of DGARM, this tribunal has set aside the impugned orders and restored the licences of the Customs brokers in the following cases:

- a) Final Order No. 52053-52054/2021 dated 3.12.2021 of CRM Logistics Pvt. Ltd.
- b) Final Order No. 500002/2022 dated 3.1.2022 of M/s. Anax Air Services Pvt. Ltd.
- c) Final Order No. 50347/2022 dated 29.04.2022 of M/s. Perfect Cargo & Logistics
- d) Final order No. 50561/2022 dated 04.07.2022 of Mauli Worldwide Logistics

9. Learned Departmental representative reiterated the findings of the impugned order.

10. We have considered the submissions on both sides and perused the records. The report of the officer which was annexed as Relied Upon Document-2 to the show cause notice shows that the GST Registrations were issued to the exporters by the Department. In fact, the analysis by the DGARM itself was based on the GST registrations issued by the department.

11. Thus, the entire basis of the finding in the impugned order that the appellant had violated Regulation 10(n) of CBLR is this report that the exporter was found non-existent and also that there was a huge difference between the inward and outward supplies of the exporter. This is clearly self-contradictory. If the exporter did not exist at all, how were the supplies being made to it and by it? Evidently, the evidence of these supplies must be the GST Returns filed by the appellant which means that the GST officers themselves were also accepting and processing the returns of the exporter which the verifying officer now reported does not exist at all.

12. Learned counsel for the appellant submitted a list and also copies of the KYC documents which it had obtained from each of the 15 exporters listed in the SCN. However, as the SCN has only provided evidence with respect to one viz., Advit Enterprises, we consider only those documents which are as follows.

- a) KYC Form of CHA
- b) Authority letter
- c) Details of Bank Account
- d) Certificate of Importer Exporter Code (IEC)
- e) Registration Certificate (GST REG-06)
- f) PAN Card
- g) Aadhar Card
- h) Lease Deed
- i) Partnership Deed

13. It is undisputed that the GSTIN, PAN, IEC, and other documents obtained by the appellant as a part of the KYC were genuine documents and were issued by the officers concerned. In our considered view, if the GSTIN is issued by the officers to persons who did not exist at the time of verification it could mean that the officers have issued GSTIN to non-existent firms or that they had subsequently either stopped operating from that address or that they had moved from that place and have not got the address changed. **In any of these scenarios, if the GSTIN was issued by the departmental officers to such a large number of non-existent persons, it shows either the lack of any due diligence on the part of the officers or an inherently flawed system of issuing GSTIN. The appellant cannot be faulted for trusting the GSTIN issued by the department.**

14. Similarly, if the importer-exporter code [IEC] issued by the Director General of Foreign Trade [DGFT] is wrongly issued to non-existent businesses and entities, the appellant cannot be blamed for trusting the IEC issued by the DGFT. Similar is the case with respect to other documents such as PAN card (issued by the Income Tax Department). When a document is issued by a Government authority, it is reasonable

to presume it to be valid. It is not open to the appellant to question these documents and it cannot, as a Customs Broker sit in judgment over the documents issued by these officers.

15. It would have been a different matter if the documents produced by the appellant were fake or forged and were not issued by the officers. Such is not the case. In fact, the entire investigation by DGARM was initiated based on the GSTIN issued to various assesseees as available in its System. Therefore, there is no possibility of the GSTIN being not issued by the department because it was extracted from its own system. Similarly, the Importer-Exporter Code (IEC) is an essential field for filing any Shipping Bill in the Customs EDI system and we find it unbelievable that an IEC not issued by the DGFT would be accepted by the Customs EDI system. Since the GSTIN is PAN based, the PAN must have also been issued by the Income Tax Department.

16. We also find that the GST Registration Certificate GST REG 06 issued to the disputed exporter on 9 February 2018 was issued with the address of the Principal Place of Business as "House No. Pvt 418-A, KH No. 137/6, 2nd Floor, Sant Nagar Village, Landmark Near Ambey Bhawan" while the IEC dated 4 July 2019 was issued by the DGFT with the address of the exporter as "LGF Pvt. Shop No. 9, plot no. 54, part of prop No. XVI/10670, Block 4 WEA Karolbagh, New Delhi". The verification report mentions that the verification was done at the latter address but it does not mention anything about the former address. It is possible that any business may change its address and sometimes may not necessarily update its address with all the authorities. It does not prove the non-existence of the exporter, let alone, non-existence of the exporter at that address the time of export.

17. We find that 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.** This responsibility 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 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)."

18. 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 officer and not the Customs broker.

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

20. 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

21. 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 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 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.”

22. 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.

23. 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

24. 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 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).

25. 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, 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.

26. 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.

27. 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.

28. In view of the above, we proceed to answer the questions framed by us in paragraph 5 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.

29. We find that the impugned order cannot be sustained and is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in Open Court)