

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3**

CUSTOMS APPEAL NO. 54889 OF 2023

[Arising out of Order-in-Original No. 02/ZR/Policy/2023 dated 19.01.2023 passed by the Commissioner of Customs (Airport & General), New Delhi]

RAVI DHANWARIYA **.....APPELLANT**
D-75, Ranjeet Vihar, Nilothi Extn. Nangloi,
Delhi-110041

Vs.

**COMMISSIONER OF CUSTOMS-NEW
DELHI -AIRPORT AND GENERAL** **.....RESPONDENT**
New Customs House, Near IGI Airport,
New Delhi

Appearance:

Present for the Appellant : Shri T. Chakrapani, Chartered Accountant

Present for the Respondent: Shri M.K. Shukla, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50363 /2025

Date of Hearing : 07/01/2025
Date of Decision: 05/03/2025

P.V. SUBBA RAO

M/s. Ravi Dhanwariya¹, New Delhi, is a proprietorship firm licensed as a Customs Broker under the Customs Brokers Licensing Regulations. On 28.10.2021 and 29.10.2021, the appellant filed six shipping bills on behalf of M/s Sharp Enterprises to export goods.

2. Receiving intelligence that the goods were highly overvalued in order to claim ineligible export benefits,

1 Appellant

investigations were initiated by the customs officers of the Special Intelligence and Investigation Branch (SIIB) of the Inland Container Depot(ICD), Tughlakabad. Samples of export goods were drawn and market enquiries were conducted and export benefits were withheld.

3. During the investigation, summons were also issued to the appellant who had largely ignored them and had not cooperated with the investigation. After completing the investigation, an SCN dated 30.5.2022 was issued by the Joint Commissioner, ICD, Tughlakabad, to the exporter and also to the appellant. A copy of this SCN was received by the Commissioner of Customs(Airport & General), New Delhi who had issued the Customs Brokers' license to the appellant. Treating this SCN as an offence report, these proceedings under the Customs Brokers Licensing Regulations, 2018² were initiated. The appellant's license was suspended on 4.7.2022, and the suspension was confirmed on 26.7.2022.

4. Thereafter, show cause notice dated 30.08.2022³ was issued to the appellant proposing revocation of its license, forfeiture of its security deposit and imposition of penalty for violation of Regulations 10(a), 10(d), 10(n) and 10(q) of the CBLR. Shri Abhishek Bansal, Deputy Commissioner, was appointed as the enquiry officer in the SCN who submitted his report on 7.11.2022 and he found that the appellant had violated Regulations 10(a), 10(d), 10(n) and 10 (q) of CBLR. A copy of the enquiry report was served on the appellant through a letter dated 9.11.2022.

2 CBLR
3 SCN

5. In its reply dated 1.12.2022, the appellant stated as follows:

"In reference to subject letter received along with Inquiry report in respect of Show Cause Notice 19/ZR/Policy/2022 dated 31.8.2022 in the case of M/s. Ravi Dhanwariya, I (Ravi Dhanwariya) hereby want to submit that all things were done with due diligence in the said case. All relevant supporting's were submitted for the case and therefore the inquiry report does not seems deemed fit.

Hereby, wish to state that we are not satisfied with the findings of the report. You are kindly requested to consider our case and oblige."

6. A personal hearing was fixed on 11.1.2023 which was attended by the appellant Shri Ravi Dhanwariya and he contested the allegations in the SCN and asserted that he had not violated any Regulations of CBLR. On the question of not responding to the summons, he said that they had received only one summons which was received by their G card holder and although they visited the office of the investigating agency, the statement could not be recorded for some reasons. He also asserted that they had done necessary KYC checks and had also obtained authorisation from the exporter.

7. After considering the report of the inquiry officer and submissions of the appellant, the Commissioner passed Order dated 19.01.2023⁴, revoking the license of the appellant, forfeiting its security deposit and imposing a penalty ₹50,000/. Aggrieved, the appellant filed this appeal.

4 Impugned order

8. We have heard learned consultant for the Appellant and learned authorised representative for the revenue and perused the records. The questions to be decided by us are whether the appellant had violated regulations 10 (a), 10(d), 10(n) and 10(q) of CBLR 2018 and if so, whether the penalty of revocation of license, forfeiture of security deposit and imposition of a penalty is proportionate to the violations. We proceed to examine the submissions by both sides with respect to each of these issues.

Regulation 10 (a)

9. It reads as follows:

"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;"**

10. The submission of the learned counsel for the appellant is that the appellant had obtained the authorisation from the exporter at the time of shipment. His second submission is that at any rate, the existence of the exporter is not in dispute as is evidenced from the following:

- i) In paragraph 5 of the impugned order, it is mentioned that the exporter had, by its letter dated 29.11.2021, authorised Shri Sachit Sharma, H-card holder of the appellant for examination.
- ii) In paragraph 11.1. of the impugned order, it is stated that the exporter had sent a letter dated 28.4.2022 seeking permission to take the goods back to town.
- iii) The exporter was represented during the panchnama drawn on 30.11.2021 and seizure during 1.12.2021.

iv) It is mentioned in the impugned order that one, Shri Saurabh Tanwar represented the exporter on the authorisation of Mrs. Savinder Sharma or M/s. Karamvir Logistics and both Mrs. Savinder Sharma and M/s. Sharp Enterprises (the exporter) were also issued notices by the SCN.

11. Learned authorised representative of the Revenue submitted that the fundamental requirement of Regulation 10(a) is not only to obtain an authorisation but also to produce it to the Assistant or Deputy Commissioner of Customs when called for. The appellant failed to do so.

12. We have considered these submissions. Regulation 10(a) requires the Customs Broker to obtain an authorisation and to produce it to the Assistant Commissioner or Deputy Commissioner when called for. It is not a task requiring any extraordinary effort since the Customs Broker is usually present on a daily basis or at least visits the custom house frequently because it is his place of work. The existence of the exporter or otherwise is not relevant to Regulation 10(a). The only thing relevant is if the authorisation had been obtained and produced when called for.

13. If an enquiry is being conducted into any consignment and if the Customs Broker is called and if he had obtained an authorisation from the exporter before filing the Shipping Bill, we find no reason for the Customs broker to not produce it. In this case, as per the records, the appellant had not even responded to several summons issued to it. It is only during the personal

hearing while passing the impugned order, the appellant stated that it had an authorisation and would be able to produce it. The Commissioner has, in our opinion, correctly rejected this submission because Regulation 10(a) not only requires obtaining an authorisation but also producing it before the Assistant Commissioner or Deputy Commissioner when called for. **We, therefore, find that the appellant had clearly violated Regulation 10(a).**

Regulation 10 (d)

14. It reads as follows:

"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;"

15. Learned counsel for the appellant submitted that this regulation has been held to be contravened by the appellant because, according to the department, the exporter had over valued its exports. There is nothing on record to show that the appellant had knowledge of the over-valuation of exports and that it had not informed the department.

16. Learned authorised representative for the Revenue submitted that the exporter had over-valued exports in an attempt to avail undue export benefits and despite being aware, the appellant had filed the Shipping Bills thereby aiding in the export fraud. He also asserted that the exporter was non-existent and exports were based on fake documentation.

17. We have considered the submissions. Regulation 10(d) only requires the appellant customs broker to advise his client to follow the Rules and Regulations and in case of any non-compliance report to the Assistant Commissioner or Deputy Commissioner. There is nothing on record to show that the appellant had not advised the exporter or that it had knowingly not reported any non-compliance.

18. The submission of the learned authorised representative is that the appellant had filed Shipping Bill in the name of a non-existent exporter and that despite being aware, had not reported the overvaluation of the exports. Insofar as the existence of an exporter is concerned, the Director General of Foreign Trade⁵ issues the Importer Exporter Code (IEC). The presumption is that DGFT has not issued benami IECs to non-existent exporters. If DGFT is issuing benami IECs and the Customs ICES system is allowing export on the basis of such benami IECs to exporters who do not exist at all or exist only on paper, the problem is not of the appellant or any other Customs Broker but it is a deep rooted systemic problem where neither DGFT nor Customs checks the existence of the exporter/importer while allowing exports and giving out export benefits. Even a ration card which gives the poor families subsidised rations worth a few thousand rupees is not issued without verifying the existence of the persons and their family size. Likewise, even a passport, which gives one nothing but a right to leave the country and return to it

5 DGFT

is not issued without police verification- prior to or after the issue.

19. The Revenue foregone on export incentives is a fairly large percentage of the total tax collected. If neither DGFT nor Customs is even checking the existence of the exporters before allowing exports and giving out the export benefits, it is a matter of serious concern but the Customs Broker is not responsible to nor authorised to find and correct the mistakes of DGFT and Customs.

20. We, therefore, find that the appellant had not violated Regulation 10(d).

Regulation 10 (n)

21. Regulation 10(n) reads as follows:

"A Customs Broker shall -

(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;"

22. Learned counsel for the appellant submitted that the appellant had a limited role in verifying the existence and functioning of the exporter . The appellant had obtained the KYC documents, IEC, GSTIN, etc. The appellant also verified the correctness of these from the websites of the concerned departments and found that they were issued by the respective officers. He further submitted that the exporter was available and was represented through Shri Saurabh Tanwar and Mrs. Savinder Sharma at the time of Panchnama and Seizure. Therefore, the appellant had not violated Regulation 10(n).

23. Learned authorised representative for the Revenue submits that investigation showed that the exporter was non-existent and was only on paper. The appellant had not physically verified the existence of the exporter and therefore, the appellant failed to exercise due diligence and therefore, violated Regulation 10(n).

24. We have considered the submissions. 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**⁶ 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**

6 2017 (3) TMI 1494- Delhi High Court

check in this regard i.e., KYC, etc. would have been done by the customs authorities.....” (emphasis supplied).”

25. 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

26. 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."

27. 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.

28. 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

29. 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).

30. 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.

31. In view of the scope of the obligation under Regulation 10(n) and the facts of the case, we find that the appellant had not violated Regulation 10(n).

Regulation 10(q)

32. This Regulation reads as follows:

A Customs broker shall:

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

33. Learned counsel for the appellant submitted that even if it is assumed that the appellant could not appear against the summons for some reasons, it does not mean that the Customs

Broker had violated Regulation 10(q). The appellant had not received the summons by post and had received only one summons which was received by Shri Ajay Dogra but on the appointed day, the officer could not record the statement for some reason.

34. Learned authorised representative for the Revenue submitted that that multiple summons were issued to the appellant including one which was personally delivered to the G-Card holder. The appellant had, however, failed to appear for questioning or provide any documentary evidence. The appellant's lack of cooperation hindered the investigation into the fraudulent activities of M/s. Sharp Enterprises. All these show the appellant's clearly did not cooperate with the investigation.

35. We have considered the submissions. As stated earlier, the line of work of the Customs Broker requires him to be at the Custom House, if not on daily basis, quite frequently. Most of the problems and doubts are sorted out across the desk by providing the necessary clarifications. When the appellant filed a Shipping Bill to clear an export consignment which has been taken up for investigation by the Customs officers, it is his duty to cooperate with the investigation. The entire sequence of events shows that the appellant not only had not cooperated but despite being issued several summons, did not appear even to record his statement. One of the summons was delivered personally to the G-Card holder of the appellant. After carefully considering the sequence of events as narrated in the SCN and the impugned order, we have not an iota of doubt that the appellant had not

cooperated at all with the investigation. The appellant's submission that it had not received the several summons issued by post and that it had received only one summon delivered by hand to Shri Ajay Dogra but the statement could not be recorded are nothing but lame excuses.

36. We, therefore, find as a matter of fact, that the appellant had not cooperated with the investigation and thereby violated regulation 10(q) of CBLR, 2018.

37. To sum up, we find that the appellant violated Regulations 10(a) and 10(q) but had not violated Regulations 10(d) and 10(n). Applying the doctrine of proportionality, we find that it would meet the ends of justice if the penalty of Rs. 50,000/- imposed on the appellant is upheld and the revocation of its licence and forfeiture of security deposit are set aside.

38. The appeal is partly allowed and the impugned order is modified to the extent that the revocation of licence and forfeiture of security deposit of the appellant are set aside but the penalty of Rs. 50,000/- imposed on the appellant is upheld.

[Order pronounced on **05/03/2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

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