

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40479 of 2022

(Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-06/2022 dated 17.8.2022 passed by the Commissioner of Customs, Tuticorin)

M/s. ARS International

No. 156, G.C. Road
Tuticorin – 629 052.

Appellant

Vs.

Commissioner of Customs

Custom House, New Harbour Estate
Tuticorin – 628 004.

Respondent

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Shri M. Ambe, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40267/2023

Date of Hearing: 11.04.2023

Date of Decision: 13.04.2023

Per Ms. Sulekha Beevi C.S.

The above appeal is filed against the order passed by the Commissioner of Customs, Tuticorin who ordered for revocation of the Customs Broker license of the appellant, forfeiture of the whole of the security deposit and imposed penalty of Rs.50,000/-.

2. Brie facts of the case are that the appellant is a holder of Customs Broker license issued by Commissioner of Customs, Tuticorin and is also transacting business at Bengaluru, Chennai, Mumbai and New Delhi. As per the investigation report dated 23.7.2020, a specific intelligence was received by Nhava Sheva Preventive Unit (Rummage

and Intelligence) Mumbai that M/s. J. Tex India has fraudulently availed ineligible IGST refund, drawback and reward by using bogus GST registration issuing bogus GST invoices (where no GST duty has been paid to exchequer) and by filing shipping bills for exporting the goods involved therein. Further, the IGST refund amount which has been disbursed is equal to the FOB value of the shipping bill. Hence the case was taken up for investigation by Nhava Sheva Preventive Unit.

3. The investigation revealed that M/s. J. Tex India had effected exports by filing 60 shipping bills through seven Customs Brokers. The status of realization of foreign remittance was ascertained from the EDI by generating RBI reports of foreign remittance in respect of the goods exported through the shipping bills filed by the said exporter. It was noted that foreign remittances were not realized by the exporter though drawbacks amounts were availed.

4. Consequently, summons was issued to the proprietor of M/s. J. Tex India in their address. However, the said summons was not received by the exporter. The Nhava Sheva Preventive Unit sent summons to the exporter through its authorized Customs Broker. Even then the exporter failed to appear before the investigating officers. In the meantime, summons were issued to various Customs Brokers including the appellant herein. Statement dated 16.7.2019 was recorded from Shri Sachin Durgude, authorized representative of the appellant. In his statement, inter alia, he stated that the KYC documents of M/s. J. Tex India was obtained through a person named Shri Hitesh Parmer and that the appellant had not personally met the exporter. The department was of the view that the appellant who is a

Customs Broker had violated Regulation 10(d), 10(e), 10(n) and 10(q) of Customs Broker Licensing Regulations, 2018. Show Cause Notice was issued to the appellant. After due process of law, the original authority held that the appellant has violated these provisions and ordered for revocation of the license, forfeiture of security deposit and imposed penalty of Rs.50,000/-. Aggrieved by such order, the appellant is now before the Tribunal.

5. The learned counsel Shri S. Krishnanandh appeared and argued on behalf of the appellant. He submitted that the allegation raised against the appellant is that the appellant did not comply with the obligations cast upon him in terms of Regulation 10(d), 10(e), 10(n) and 10(q) of CBLR, 2018. The said Regulation reads as under:-

“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;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(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;

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

6. The department has alleged that the appellant did not obtain the KYC document of M/s. J. Tex India, the exporter, directly and had obtained it from Shri Hitesh Parmar. There is no obligation under the

Regulation that the appellant who is a Customs Broker should meet the client directly and obtain the KYC documents. The appellant had furnished a representation dated 16.6.2020 against the inquiry report to the Commissioner of Customs, Tuticorin wherein they had challenged the findings of the Inquiry Officer's report confirming the allegations levelled against the appellant in the Show Cause Notice. The exporter had an Import Export Code (IE Code) Number, bank account, PAN card, GSTIN (UIN) number and were operating on the basis of these statutory documents provided by the Governmental authorities. It is submitted by the learned counsel that to obtain an IE Code, it is mandatory for any person to have a PAN issued by the Income Tax Department as well as to have a bank account. Further, to obtain GSTIN (UIN) registration, the appellant has to furnish the details of IEC / PAN obtained. The department would issue the GST number only after verification of address of the appellant and other details. All these registration numbers including GSTIN were active and operative. Only later, after the investigation was initiated, the department has cancelled the GST registration on 26.11.2019. As the exporter had PAN, IE Code, GST registration, the appellant handled the export consignments for and on behalf of the exporter. It is not necessary that the appellant has to meet the exporter directly and obtain the documents directly. The department has not been able to adduce any evidence that the appellant was in some manner involved in the fraud committed by the exporter. The appellant has not been connected with the goods exported or with the supplier abroad. Thus the allegation that the appellant has grossly failed in taking due care and diligence in

verifying the identity of the client is without any basis. The appellant had verified the KYC documents by usual process of document verification and also had done verification with the bank. He prayed that the appeal may be allowed.

7. The learned AR Shri M. Ambe supported the findings in the impugned order. It is submitted by learned AR that the exporter has made exports using various other Customs Brokers and had obtained ineligible drawback. The appellant ought to have made genuine verification of the details of the exporter. As there is failure to comply with the obligations of the Regulation under CBLR 2018, the revocation of license is legal and proper.

8. Heard both sides.

9. The relevant Regulation of CBLR 2018 has already been reproduced above. As per Regulation 10(d), the Customs Broker is required to advise the client to comply with the provisions of the Act and bring to the notice of the department in case of non-compliance. Regulation 10(e) requires that the Customs Broker has to exercise due diligence to ascertain the correctness of information provided by the client to him. Regulation 10(n) casts an obligation on the Customs Broker to verify the correctness of IE Code, GST Registration etc., identify of the client and functioning of client at the declared address by using reliable independent authentic document, data or information. In the present case, it is brought out from evidence that the exporter had a valid IE Code, GST registration, PAN card and bank details. It is submitted by learned counsel for appellant that the Customs Broker had done the KYC verification of the exporter namely J. Tex India by

checking the details of GSTIN, IE Code. The department issues GSTIN number only after background checking of the exporter. The address and business details of the person who has applied for the GST registration is verified by the department. When the said registration is still operative as per the website, the Customs Broker cannot be found fault if he has relied upon such data available on the Government website.

10. From the appreciation of facts, we find that there is no evidence brought out that there is any overt involvement of the Customs Broker in the fraud committed by the exporter. There is no basis to allege that the appellant has violated the relevant Regulations of CBLR, 2018.

11. From the foregoing, we find that the department has failed to establish with cogent evidence that there are grounds for revoking the license of the appellant. The impugned order is therefore set aside. The appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 13.4.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)