

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

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 75018 of 2022**

(Arising out of Order-in-Original No.KOL/CUS/AIRPORT/ADMN/26/2021 dated 23/11/2021 passed by Commissioner of Customs (Airport & ACC).

**M/s. B. K. Clearing Agency**

(CB, A-19/3A, Subhas Marg, 3<sup>rd</sup> By Lane, Kolkata-700060)

**Appellant**

*VERSUS*

**Commissioner of Customs (Administration & Airport), Kolkata**

(Customs House, 15/1, Strand Road, Kolkata-700001)

**Respondent**

**APPEARANCE :**

Mr. H. K. Pandey, Advocate for Appellant

Mr. M. P. Toppo, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**

**HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75256/2023**

Date of Hearing : 24 March 2023

Date of Decision : 26 April 2023

**PER K. ANPAZHAKAN**

The brief facts of the case are that the Appellant is a holder of Custom Broker (CB in short) License and have been functioning at Air Cargo Complex, Kolkata. Sri Arup Ghosh, a G-Card Holder was the Authorized signatory of the Appellant. Shri Arup Ghosh has attended export of several consignments of Human Hair of M/s. S.S.Impex, Hyderabad, at Kolkata Cargo Complex during the period June 2019 to December 2020. M/s. Arup Ghosh himself obtained a separate CB Licensee in the name of M/s. Just Logistic-1 at Air Cargo Complex Kolkata, in November 2020.

2. M/S Just Logistic-1 has filed a shipping bill no. 7926810 dt 15.01.2021, for export of human hair by M/S S.S. Impex, Hyderabad. The export consignment was detained by SIB (AirPort) for

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undervaluation. On verification, it was found that M/s. S. S. Impex, Hyderabad was not available at the address declared in the IE Code and GSTIN Certificate. On the basis of the investigation report of SIB, proceedings under Regulation 17 of CBLR, 2018 was initiated against the Appellant and a Notice was issued for violation of Regulations 1 (4), 10(d), 10(m), 10(n) and 13(12) of the Customer Broker Licensing Regulation 2018, in connection with the past exports of M/s. S. S. Impex, Hyderabad during the period of June 2019 to December, 2020. The Principal Commissioner of Customs (Airport & ACC) adjudicated the Notice and ordered for revocation of the CB license of the Appellant and ordered for forfeiture of security deposit under regulation 14 of CBLR 2018 and imposed penalty of Rs 50,000 under Regulation 18 of CBLR 2018. The Appellant is before us against the above said Order dated 23/11/2021 (hereinafter referred as the Impugned Order) passed by the Principal Commissioner of Customs.

3. From the Impugned Order it is observed that the Appellant has cleared 81 Shipping Bills of Raw Human Hair, classifiable under CTH0501, of M/s S.S Impex, Hyderabad, who has been found to be non existent as per the Report received from the concerned GST authorities. The investigation conducted also revealed that all these consignments were grossly undervalued and no BRC (Bank Realization Certificate) is available in respect of any of these consignments as per the DFGT website. In view of the above findings during investigation, the Department contended that all these Shipping Bills were exported with a malafide intention and were highly undervalued as no genuine exporter can continue exporting goods without getting money from foreign buyers.

4. The allegation of the Department is that the Appellant has transferred all the works related to clearance of under-invoiced Raw Human Hair to Mr. Arup Ghosh who misused the license to clear the consignments of Raw Human Hair through Air Cargo Complex, Kolkata. To substantiate this claim, the Department relied upon the statement dt 03/02/2021 of Shri Tarun Kumar Koley ( F-Card Holder and Proprietor of CB B.K. Clearing Agency), wherein he admitted that he used to get

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payments by transfer from Bank Account by M/s LG Enterprise only irrespective of the exporters. L G Enterprises is the sister company of M/s. Just Logistic-1 owned by Shri Arup Ghosh. This means that Customs clearance charges were collected by Shri Arup Ghosh in the account of M/s LG Enterprise which is owned by his wife. Thereafter, he used to transfer money to the account of Shri Koley. Further, Shri Koley has stated that Customs clearance work related with consignments of Raw Human Hair were procured by Shri Arup Ghosh who used to remain in contact with the exporters. The Department alleged that all these evidences clearly indicates that the Appellant has literally transferred their license to Shri Arup Ghosh, otherwise payments for Customs clearance should come in the account of the Appellant directly from the exporters. Hence, the Impugned Order concluded that the Appellant has violated the Regulations 1(4), 10(d), 10(m), 10(n) and 13(12) of the CBLR 2018 and accordingly, the license of the CB was revoked.

5. In their argument against the revocation of the license, the Appellant has made the following submissions:

(a) The Customs Department has not issued any Show Cause Notice to M/s S.S. Impex, under section 124 of Customs Act, 1962, in connection with the export of Human Hair, for the exports made during the period June 2019 to December 2020.

(b) All the 81 Shipping Bills were allowed for export by the proper officer under Section 51 Of the Customs Act, 1962 and no irregularities were noticed while processing the documents submitted for export of the said consignments.

(c) There is no involvement of the Appellant in the alleged undervaluation of human hair, as the export of the said goods were allowed by the Customs Department without any objection.

(d) Mr. Arup Ghosh, owner of Just Logistic-1, only acted as an Intermediary to procure export jobs. Transfer of money from the Account of L G Enterprises to the Appellant, for attending the Customs Clearance work of S.S. Enterprises, was only a mutual agreement between them. This arrangement cannot be considered as transfer of

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License by the Appellant to Mr. Arup Ghosh. Hence, there is no violation of Regulation 1 (4) of CBLR 2018.

(e) The Shipping Bill No 7926810 dt 15/01/2021, for export of Human Hair by the Exporter S S Impex, Hyderabad, was filed by Just Logistic-1 and they are only responsible for undervaluation or any other violation in the said shipping bill. The Appellant cannot be held responsible for non realization of the export proceeds by the exporter for the goods exported.

(f) The investigation has concluded that S.S Impex is non-existent at the address declared in the IE Code and GSTIN, on the basis of the report received from GST Authorities of Telengana. The investigation completely ignored the KYC documents such as IE Code and GSTIN submitted by M/s S S Impex, in compliance with Regulation 10 (n) of CBLR 2018.

(g). M/s S S Impex has not attended the investigation in connection with the shipping bill no 7926810 dated 15/01/2021. The Report from the GST Authorities indicated that the said exporters are presently not available in the address declared in the IE Code and GSTIN. Hence, The Offence Report of SIB (Airport) concluded that they were non-existent for all the 81 consignments exported earlier during the period June 2019 to December 2020, without any evidence.

(h) Regarding the violations of 1(4) and 13(12) of CBLR, 2018, they stated that Mr. Arup Ghosh has attended the export documents of S S Impex , Hyderabad as a G-Card holder employee of the Appellant and hence there is no violation of this Regulation.

(i) They have properly advised their clients regarding the export procedures and took all precautions for timely clearance of the export consignments. All the allegations made in the Investigation report were only on the basis of assumptions. Thus, they contended that there is no violation of the Regulations 10(d), 10(m), 10(n) and 13(12) of CBLR 2018.

(j) SIB (Airport) has made this case against the Appellant one year after clearance of the export consignments. There was no objection raised by the Department when these consignments were cleared.

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6. In view of the above submissions, the Appellant contended that they have not violated any of the provisions of CBLR 2018. There is no evidence against the allegation of undervaluation. The exporters have not taken any export benefit violating any of the provisions of the Customs Act, 1962. If the exporters are not available in the address declared in IE Code and GSTIN, the Appellant cannot be held responsible for their non-existence after a period of one year from the date of export. The Appellant cannot be held responsible for non realization of the export proceeds by the exporter for the goods exported. They have obtained all the KYC documents required as mentioned in the Board Circular 9/2010 dated 08/04/2010 and hence fulfilled all responsibilities entrusted to them in the capacity of a CHA. Accordingly, they requested to set aside the Impugned Order and restore their license.

7. Heard both sides and perused all the documents submitted by both sides. The questions which need to be answered here are:

- (a) Given the factual matrix of the case and the evidence available on record, whether the Ld Principal Commissioner was correct in holding that the appellant Customs Broker has violated Regulation 1(4),10(d),10(m),10(n) and 13(12) 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, then whether the forfeiture of security deposit is 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?

8. The Impugned Order alleges that the Appellant has violated the Regulations 1(4),10(d),10(m),10(n) and 13(12) of CBLR 2018. We will examine each of the violations based on the submissions made by the Appellant and the material evidences available on record.

9. Regarding the violation of 1(4) of CBLR, 2018, the Department stated that the Appellant has transferred all the works related to clearance of

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under-invoiced Raw Human Hair to Arup Ghosh and he misused the license to clear the consignments of Raw Human Hair through Air Cargo Complex, Kolkata. To substantiate this claim, the Department relied upon the statement dt 03/02/2021 of Shri Tarun Kumar Koley, Proprietor of the Appellant Company, wherein he admitted that he used to get payments by transfer from Bank Account by M/s LG Enterprises only irrespective of the exporters. L G Enterprises is the sister company of M/s. Just Logistic-1 owned by Shri Arup Ghosh. This means that Customs clearance charges were collected by Shri. Arup Ghosh in the account of M/s LG Enterprise which is owned by his wife. Thereafter, he used to transfer money to the account of Shri Koley. The Department alleged that all these evidences clearly indicates that the Appellant has literally transferred their license to Shri Arup Ghosh, otherwise payments for Customs clearance should have come in the account of the Appellant directly from the exporters. The Appellant stated that Mr. Arup Ghosh has attended the export documents of S S Impex, Hyderabad in his capacity as a G-Card holder employee of the Appellant and hence there is no violation of this Regulation. Mr. Arup Ghosh, owner of Just Logistic-1, only acted as an Intermediary to procure export jobs. Transfer of money from the Account of L G Enterprises to the Appellant, for attending the Customs Clearance work of S.S. Enterprises, was only a mutual agreement between them. This arrangement cannot be considered as transfer of License by the Appellant to Mr. Arup Ghosh. Hence, the Appellant contended that there is no violation of Regulation 1 (4) of CBLR 2018.

9.1 We find merit in the argument of the Appellant. The Appellant has been clearing the export consignments of their client M/s S.S Impex, Hyderabad, from June 2019 to December 2020. Mr. Arup Ghosh has been attending the clearance work in his capacity as a G-card holder and Authorized Representative of the Appellant for more than a year. So, it cannot be said that the Appellant has transferred their license to Mr. Arup Ghosh. Receipt of payment by the Appellant from L G Enterprises cannot be a ground to conclude that the Appellant has transferred their license to Mr. Arup Ghosh. It is an internal

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arrangement between them. Thus, we hold that there is no merit in the allegation of violation of Regulation 1 (4) by the Appellant.

10. Regarding the allegations of violation of Regulations 10 (d) of CBLR 2018, we find that this Regulation obliges a Customs Broker to advise his clients to comply with the provisions of Customs Act, 1962. In case of failure by his clients, it is the responsibility of a Customs Broker to immediately bring this non-compliance to the notice of DC or AC of Customs. Shri Arup Ghosh, G-card Holder of the Appellant has been advising them for clearance of export of human hair for more than a year. 81 shipping bills have been cleared during the period June 2019 to December 2020. No objection was raised by the Department about these clearances. In fact, the present shipping bill in question was filed by Just Logistic-1 and not by the Appellant. For any violation in this shipping bill, only Arup Ghosh and the CB Just Logistic-1 need to answer and not the Appellant. We find that there is no evidence available on record to substantiate the allegation that the Appellant has not advised their client properly. Thus, we find that the allegation of violation of Regulations 10 (d) is not sustainable.

11. Regarding violation of Regulation 10(m), we find that it obliges a Customs Broker to perform his duties with efficiency and utmost speed. There is nothing on record to prove the allegation that the Appellant has not performed their duties with speed and efficiency. They have cleared 81 shipping bills of S S Impex, Hyderabad during the period June 2019 to December 2020. There was no objection raised by the Department during the clearance of these consignments. Thus, we hold that the allegation of violation of Regulation 10 (m) by the Appellant is not substantiated.

12. Regarding violation of Regulation 13(12), we find that it obliges a Customs Broker to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment. In this case, initially Arup Ghosh, the G-card holder and Authorized representative of the Appellant attended the clearance work of Human Hair of M/s S S Impex,

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Hyderabad. No objection was raised by the Department. For the present consignment, the shipping bill was filed by Just Logistic-1, not the Appellant. The Appellant cannot be held responsible of the violation if any committed by Just Logistic-1. For the past 81 shipping bills also, no objection was raised during their clearance. Now, the objection has been raised because the exporter S S Impex Hyderabad was not found to be existing at the address mentioned in the IE Code and GSTIN. If they are not existing at the designated address, the Appellant cannot be held responsible. Thus, we hold that the allegation of violation of Regulation 13(12) is not proved.

13. The next allegation is violation of Regulation 10( n) of CBLR 2018, which obligates the CB to verify the correctness of IE Code, GSTIN and functioning of their client at the declared address by using reliable, independent and authentic data, documents or information. The appellant submitted that they have carried out the due diligence as required under Regulation 10(n) by obtaining the documents such as IE Code, GSTIN etc. However, in the impugned order, the Ld Principal Commissioner has concluded that the CB has not verified the above said documents as prescribed in the Annexure to the Circular 9/2010 dated 08/04/2010. . We find that the CB has taken the documents such as IEC, GSTIN etc. These documents were issued by Government Agencies, which substantiate the existence of the exporters at the relevant time of issue of these documents.

14. We find that paragraph 6 of the Circular 9/2010-Cus dated 8.4.2010 requires the client to furnish to the CHA, a photograph of himself / herself, in the case of an individual and those of the authorized signatory in respect of other forms of organization such as company/trusts, etc. and any two of the listed documents in the annexure to the said Circular. Thus, it is evident that even as per the Circular, obtaining a photograph and any two of the documents listed in the Annexure to the circular is sufficient compliance of Regulation 10(n) of CBLR, 2018. The most important documents in these cases are the IEC and the GSTIN – one issued by the same department and the other by the DGFT. The IEC issued by the DGFT has not been disputed at all



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without which the goods could not have been exported . The Appellant has obtained these documents as prescribed in the said Circular.

15. We observe that the Customs Brokers play an important role in the Customs administration and have to fulfill their responsibilities and obligations under the law. The law in question in this case is Regulation 10(n) of CBLR, 2018. The allegation against the appellant is based on a report received from the CGST authorities of Telengana. Their report indicate that the exporter S S Impex , Hyderabad were not available at the address declared in the IE Code and GSTIN.

16. Regulation 10(n) of CBLR 2018 assigns certain responsibilities to the CB. For the sake of easy reference, the said Regulation reproduced below:

**“10. Obligations of Customs Broker-** 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.,”**

We have to examine whether the CB has complied with the provisions of the above said regulation. We find that the Tribunal has examined the scope of these obligations in the case of M/S Anax Air Services Pvt Limited vs Commissioner of Customs, (Airport and General), New Delhi. The relevant portion of the order is reproduced below:

“22. 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

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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.

23. 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, obligations under Regulation 10(n) of CBLR cannot be read to mean the latter as it would amount to treating the Customs Broker as one who is responsible to oversee and ensure the correctness of the actions by the Government officers who issued these documents. It would also mean that the Regulations under the Customs Act will prevail over the actions 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 which is not a correct construction of the legal provisions. Therefore, the 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

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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."

24. 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 and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned.

25. The third obligation under Regulation 10(n) requires the Customs Broker to verify the identity of the client using

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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.

26. 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. If a document is issued by any other person not interested in the relationship of the client and the Customs Broker, it can be called independent. But it should also be reliable and authentic and not one issued by any Tom, Dick and Harry. Documents such as PAN card issued by the Income Tax, driving licence issued by the RTO, Election voter card issued by the Election Commission, the passport issued by the Passport Officer, etc., certainly qualify as such documents as none of these departments have any interest in the relationship between the client and the Customs Broker and these documents are presumed to be authentic and reliable having been issued by the Government officers. 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).

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27. The fourth 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 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. In two of the cases, the

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GST officers have also received some GST returns from the clients.

28. 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. Of course, if the Customs Broker was aware that the client has moved and continues to file documents with the wrong address, it is a different matter.

29 When a Government officer issues a certificate or registration with an address to an exporter, it is not for the Customs Broker to sit in judgment over such a certificate. The Customs Broker cannot be faulted for trusting the certificates issued by a government officer. It is a different matter if documents are not authentic and are either forged by the Customs Broker or the Customs Broker has reason to believe that the documents submitted to him were forged. It has been held by the High Court of Delhi in **Kunal Travels 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)."**

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30. In this case, the negative reports were issued by the jurisdictional GST officers who, or whose predecessors or colleagues, must have issued the GST registration. Thereafter, if it is found that the exporter is not operating from that address at all and the GST registration was wrongly issued, the responsibility rests on the officer who issued the GST Registration and not the Customs Broker. The wisdom in hindsight of the officer that the GSTIN was wrongly issued at that address cannot be used against the Customs Broker. The appellant relied upon the GST Registration Certificates and if relying on them is an offence, issuing them when the firms didn't even exist must, logically be a much graver offence and the officers who issued them must be more serious offenders. There is nothing in the reports of the jurisdictional officers to indicate as to why and how the GST registration was issued when the exporters did not exist at all. We also find that there were other documents procured by the appellant issued by various other authorities which have not been alleged to be, let alone, proven to be fake or forged by the Revenue. Evidently, they also must have been issued by concerned officers like the GST Registration issued by the jurisdictional officers.

31. Unless all these officers of various organizations (including the jurisdictional GST officer who issued the registration) either acted fraudulently or carelessly, the above could not have been issued.

32. 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 does not lie at the doorstep of the Customs Broker and it is not up to the Customs Broker to doubt the

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documents issued by the authorities and he cannot be faulted for believing them to be correct.

33. It is possible that by efflux of time, when the GST officers went for verification, situation changed. If so, it is a ground for starting a thorough investigation by the officer and is not a ground to suspend/cancel the license of the Customs Broker who processed the exports. We also find that there is nothing in the SCN to prove that the exporters did not exist or operate from the addresses when the Shipping Bills were filed.

34. On a query from the bench as to how the Custom Broker can be fouled when he relied on the IEC, GST Registration and several documents issued by the Government and if the exporter did not exist at all at the premises how these documents were issued by several Government officers, learned Departmental Representative submitted that officers issue these documents as per their mandate which does not include physical verification of the business premises. He further clarified that in almost all these cases, the Registrations are issued by the officers based on online applications. They are not mandated to ensure that the exporter(s) exist and are functioning from these premises but the Customs Broker is so mandated by Regulation 10(n) of the CBLR, 2018 which obligation does not get obliterated or diluted by the fact that officers of various departments have issued these documents.”

17. From the above discussion, we find that physical verification of the business premises is not an obligation cast upon the CB, under Rule 10(n) of CBLR, 2018.

18. The Tribunal in the above said Order further examined the reliability of these documents issued by various Government agencies and analyzed the scope of the Custom Broker in relying on these documents to fulfill their obligations under CBLR 2018.

“38. As far as these documents issued by various Government officers are concerned, the submission of the Departmental Representative is interesting and needs a deeper examination. It



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is his submission the documents were neither issued fraudulently nor issued carelessly but were issued within the mandate of the officers who issued them and this mandate does not include physical verification. In other words, the submission is that the system designed by the Government for issue of these certificates itself is such that they can be issued even to persons who do not exist at all at the declared premises. We proceed to examine this proposition.

39. It is common knowledge that in designing schemes for issuing registrations, certificates or providing incentives, two conflicting objectives of due diligence and facilitation are balanced. Too many checks can make life difficult for the exporter or the citizen and too much facilitation can open the doors for frauds. Determining the golden mean and where to draw the line is a matter of public policy. The extent of liberalization or tightening may also vary greatly from one system to another and that is also a matter of public policy. If one wants to obtain a passport, for example, which gives one nothing more than the right to leave the country and to return to it, the passport is issued either after or subject to police verification so that the passports are not issued incorrectly or misused. Similarly, if a poor hut-dweller wants a Ration Card which entitles him and his family to subsidized or free food from the State worth a few thousand rupees, such a card is issued only after verifying his address, the number of his family members, etc. so that the scheme may not be misused by those who are not entitled to the benefits.

40. On the other hand, anybody, even the very hut-dweller living below the poverty line wants to export goods and claim export incentives, neither his means nor his capability can be either checked or held against him. The Shipping Bills are processed by the Customs solely based on the fact that an IEC is issued to the exporter by the DGFT. Nothing in the Customs Act empowers the Customs officers to stop an export or import based on who the importer or exporter is or what his antecedents are. Even if the person is convicted of a criminal offence under the Customs Act itself, the Act does not enable the officers to stop his imports or exports. Means of the person cannot be questioned either. The same hut-dweller, who gets his ration card after due verifications can get an IEC from DGFT based

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solely on an online application and after submitting his documents and can file a shipping bill for export of goods worth several crores of rupees and his lack of means does not mean that the officers can stop such an export. All that is required is that the exporter or importer should have an IEC issued by the DGFT. The IEC is issued by the DGFT on an online application in Form ANF2 and some supporting documents. For instance, in case of individuals, the documents that are required are:

- i. Digital Photograph (3x3cms) of the Proprietor.
- ii. Copy of PAN card of the Proprietor.
- iii. Copy of Passport (first & last page)/Voter's I-Card/ Driving Licence/UID (Aadhar card) (any one of these).
- iv. Sale deed in case business premise is self-owned; or Rental/Lease Agreement, in case office is rented/ leased; or latest electricity /telephone bill.
- v. Bank Certificate as per ANF 2A(I)/ Cancelled Cheque bearing pre-printed name of applicant and A/C No

41. All that are required are a photograph, one's Aadhar card, PAN card and electricity bill or rent agreement and a cancelled cheque. Most Indians have an Aadhar card and PAN card can be obtained from Income tax based on the Aadhar card. Once an IEC is issued by the DGFT, one can start exports and imports. **By producing the above documents, anyone can easily get an IEC which forms the foundation on which the entire edifice of regulatory structure over imports and exports is built. This includes not only the right to export or import but also the entitlement to and receipt of incentives such as drawback, GST refund and various export incentive schemes formulated by the DGFT. Thus, this is a very liberal, business-friendly, open, system which also makes it vulnerable to misuse.**

42. While the DGFT issues the IEC, actual exports take place through the Customs which forms the second point of check over imports and exports which is also quite liberal. There are two levels of checks in Customs – assessment of the documents by the officer and physical examination of the goods being exported both of which are done only in selected cases and other cases are '**facilitated**' i.e., **the export is allowed without any officer either assessing the shipping bill or examining what was actually being exported to ensure that it matches with the shipping Bill. The customs Risk Management System (RMS) decides which shipping bill**

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**"7. Exports - procedure, methodology and scope**

7.1 Export procedure requires filing of electronic self-declaration (shipping bill) by exporter before the goods move from exporter's premises. The RMS allows the lowest risk category to be cleared as facilitated without subjecting the cargo to assessment or examination. **In this study, facilitation level for shipping bills at seaports/ICDs was seen to be 80%, and at air cargo complexes at 95%.**

**Thus, there is a 80 to 95% probability of a fraudulent export not being detected by the Customs. Even if an exporter is caught and is being investigated for such an export, the Customs officers cannot legally stop his future exports."**

43. The third level of check is through the banks when the remittances pertaining to the exports are received. The export data is transmitted by the Customs to the Reserve Bank of India online where it is matched with the remittance data obtained from the banks. Remittances have to be received within one year and so there is no immediate check at the time of export. It is a sort of post-mortem exercise for possible remedial action.

44. As far as the export incentives such as drawback are concerned, they are received on the basis of the shipping bills cleared by the Customs and the corresponding Export General Manifest (EGM) filed by the Master of the Vessel or his agent confirming that the container is loaded on to the ship. Regardless of whether the remittance is received (for which a time of one year is available or not, the exporter gets drawback into his account immediately from the Government.

45. To sum up, the entire system of exports is based heavily on trust and facilitation and very less emphasis on due diligence which enhances trade facilitation but also makes it vulnerable to misuse by fraudsters. The IEC is issued by DGFT based only on an online application and a few easy to obtain documents. So, one cannot rule out the possibility of an IEC being issued without the person even operating its business from the address. The IEC forms the foundation for the entire system of controls and, in turn, is the basis for issue of various licences and scrips by the DGFT and is also the basis for Customs allowing exports. In view of the customs RMS letting 80% to 95% of the exports without either assessing the

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documents or examining the records, there is a very high probability of any fraudster successfully exporting the goods (or even empty containers) and claiming the export incentives and profiting from it."

19. On the basis of the above observations, the Tribunal, in the case of Anax Air Services Pvt Ltd concluded as under:-

"46. Thus, both the financial gain to an individual and the aggregate financial impact on the budget are large but the policy and schemes are not designed mainly to facilitate the good guys and genuine exporters and not to keep the crooks out. This balance is a matter of policy. Learned departmental representative was correct in stating that the officers work within their mandate which may not include physical verification of the premises of the exporters. **Nevertheless, the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in this case is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer and the appellant has fully met his obligations under Regulation 10(n).**

47. To sum up, the only allegation against the appellant in the impugned order is that it violated Regulation 10 (n) which we find is not true.

48. In view of the above, we proceed to answer the questions framed by us in paragraph 4 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.

49. The impugned order cannot be sustained and is set aside and the appeal is allowed with consequential relief, if any."

20. We find that the ratio of the above said order of the Tribunal is squarely applicable in this case. In the present case also, the appellant

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has collected the documents such as IEC, GSTIN etc. submitted by the exporter S S Impex, Hyderabad before processing their shipping bills. Later if they were not found to be existing in the said addresses, the appellant cannot be held responsible for their non existence at the address specified, as held by the Tribunal, New Delhi in the case of Anax Air Services.

21. Thus we find that the allegation against the appellant in the impugned order that they have violated Regulation 10 (n) is not sustainable.

22. In view of the above, we proceed to answer the questions framed by us in paragraph 7 above. The answer to question (a) is that in the factual matrix of the case and evidence available on record, the Ld. Principal Commissioner was not correct in holding that the appellant Customs Broker has violated Regulations 1(4),10(d),10(m),10(n and 13(12) of CBLR, 2018. Consequently, the answer to questions (b), (c) and (d) are negative.

23. Therefore, the impugned order cannot be sustained and is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in open court on 26 April 2023)

**Sd/-**

**(P. K. CHOUDHURY)  
MEMBER (JUDICIAL)**

**Sd/-**

**(K. ANPAZHAKAN)  
MEMBER (TECHNICAL)**

Pooja