

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87260 of 2022

(Arising out of Order-in-Original CAO No. 39/CAC/PCC(G)/SJ/CBS/Adj. dated 19.09.2022 passed by the Principal Commissioner of Customs (General), Mumbai Zone-I)

M/s Lingama Logisol Pvt. Ltd.

.... Appellant

C.B. No.11/2405 – A-801, Akshardham CHS Ltd.,
Pannalal Gosh Marg, Rajan Pada, Off Link Road,
Opp. Toyota showroom, Malad(W), Mumbai – 400 064

Versus

**Principal Commissioner of Customs (General).... Respondent
Mumbai**

New Custom House, Ballard Estate, Mumbai - 400001

Appearance:

Shri Anil Balani, Advocate for the Appellant

Shri Ram Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86348/2023

Date of Hearing: 08.05.2023

Date of Decision: 07.09.2023

Per: M.M. PARTHIBAN

This is an appeal filed by M/s Lingama Logisol Private Limited (herein referred to as 'appellants' for short) assailing the Order-in-Original CAO No. 39/CAC/PCC(G)/SJ/CBS/Adj. dated 19.09.2022 (referred to as 'impugned order').

2. In the impugned order the learned Principal Commissioner of Customs (General), in exercise of powers conferred upon him under Regulation 17 (7) of the Customs Brokers Licensing Regulations, 2018 (CBLR) had revoked the CB license issued to the appellants for acting as a Customs Broker under the above regulations ibid, besides imposition of penalty and forfeiture of entire security deposit

furnished by the appellants. Being aggrieved against the impugned order, the appellants have filed this appeal before the Tribunal.

3. The brief facts of the case are that an investigation report dated 21.01.2022 received from Special Intelligence & Investigation Branch (SIIB) of Airport Special Cargo Commissionerate (APSC), Mumbai Customs Zone-III, indicated that out of 21 identified fraudulent exporters of Cut & Polished diamonds, the appellants as Customs Broker had handled two of such exporters. During the investigation it was found that unscrupulous persons had created bogus entities by obtaining Import Export Code (IEC) in the name of real estate agents, drivers, teachers who were unrelated with the Diamond trade and used such non-functional IECs, with non-existent address declared in IECs, for fraudulent export activities. The appellants have handled exports in respect of two such exporters viz. M/s Swastik Enterprises and M/s Ganesh Exports. The investigation also revealed that on paper the proprietor of M/s Swastik Enterprises is shown as Shri Mukesh Madhu Regar, even though the actual owner of the business entity is Shri Nikunj. Similarly, in respect of M/s Ganesh Exports the on paper proprietor is shown as Shri Mangi Lal Gurjar, even though the actual owner of the business entity is Shri Punabhai Chandpara. Further, investigation revealed that by procuring non-functional and non-existent addresses and by preparing forged documents, the aforesaid two exporters viz., M/s Swastik Enterprises and M/s Ganesh Exports have illegally exported cut & polished diamonds valued at Rs.36.20 crores and Rs. 185.16 crores, respectively, in the past. As the goods involved in such Indian exports are liable for seizure under Section 113(d) & 113(i) of the Customs Act, 1962, separate proceedings under CBLR was initiated by jurisdictional Commissioner on the appellants by issue of notice dated 21.04.2022 alleging charges of contravention of Regulations 10(a), 10(d), 10(k) and 10(n) of CBLR, 2018. In deciding these allegations the impugned order has been passed by the learned Principal Commissioner of Customs (General) by invoking the Customs Broker license granted to the appellants besides imposition of penalty of Rs.50,000/- and forfeiture of the entire amount of security deposit furnished to the Customs authorities.

4.1. Learned Advocate appearing for the appellants submitted that this case relates to the appellants having handled two export consignments relating to Shipping Bill No.6050327 dated 22.10.2020 filed by M/s Swastik Enterprises and Shipping Bill No. 6035936 dated 22.10.2020 filed by M/s Ganesh Exports. The appellants were never a party of any larger export fraud, as they had handled the said exporters for the first time in the above export consignments. There is no violation of any provisions of the Customs Act, 1962 except the claim of the department about the controversy on the ownership of the IEC. As the exporters M/s Swastik Enterprises and M/s Ganesh Exports have been regularly transacting with the Customs department in the past, and as admitted by the department in the impugned order that they had exported several consignments of cut & polished diamonds in the past for a total amount of Rs.36.20 crores and Rs.185.16 crores, respectively, there was no reason for the CB to doubt about the genuine nature of the exporters.

4.2. Further, learned Advocate also stated that the IECs were genuinely issued by the Director General of Foreign Trade and that they are valid. The authority letters for engaging the appellants as CB have been signed by the IEC holders and the relevant documents were submitted to Customs. On the other hand, the appellants were not given copy of investigation report dated 21.02.2022 to effectively defend them despite their request for supply of the same. Thus, he stated that suspension action taken in the impugned order does not sustain as such action should be made only in appropriate cases, where immediate action is necessary. In this regard, he relied upon the following case laws: -

- (a) *Commissioner of Customs Vs. National Shipping Agency – 2008 (226) E.L.T 46 (Bom.)*
- (b) *Schankar Clearing & Forwarding Ltd. Vs. C.C. (Import & General) – 2012 (283) E.L.T. 349 (Del.)*
- (c) *R.S. Kandalkar Vs. Commissioner of Central Excise – 2014 (299) E.L.T. 360 (Tri. - Mumbai)*
- (d) *P. Cawasji & Co. Vs. Commissioner of Customs (General), Mumbai – 2018 (364) E.L.T.871 (Tri. - Mumbai)*
- (e) *P.P. Associates Vs. Commissioner of Customs (General), Mumbai – 2016 (343) E.L.T. 684 (Tri. - Mumbai)*

5. Learned AR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the appellants have processed the shipping bills without proper antecedent verification of exporters by using any reliable means, even after knowing that the export goods belong to a third person, other than the exporter. Hence, he pleaded that the impugned order is sustainable in law.

6. We have heard both sides and have gone through the records of the case.

7. From the perusal of the records and factual matrix of the case, it is seen that the Department had initiated independent action against the appellants under CBLR, 2018 on the basis of SIIB Customs investigation report dated 21.01.2022 about alleged irregular export of cut and polished diamonds by two exporters, for which the appellants have filed Shipping Bills before the Customs authorities, and in respect of which the export goods do not belong to the proprietor of IEC/export entity. During the said investigation it was revealed that the failure to carry out a proper 'Know Your Customer' (KYC) verification by the appellants in the above case, is one of the root cause for the fraudulent exports in violation of Section 50(2) of the Customs Act, 1962 and Foreign Trade (Development and Regulation) Act, 1992 and thus the export goods were seized under Section 113(d) & 113 (i) of the Customs Act, 1962. Accordingly, the jurisdictional Principal Commissioner suspended the CB license under Regulation 16(1) of CBLR, 2018 on 17.02.2022. Subsequently, after giving a post-decisional hearing the jurisdictional Principal Commissioner continued the suspension by issue of an order No.52/2022-23 dated 08.04.2022. Further, regular inquiry proceedings were initiated under Regulation 17(1) *ibid*, by issue of show cause notice No.02/2022-23 dated 21.4.2022, specifying the grounds on which the appellants have been alleged to have been violated. In conclusion of these proceedings, the impugned order was passed by the jurisdictional Principal Commissioner revoking the Customs Broker license granted to the appellants for the failure on the part of appellants to fulfill the obligations cast on them under Regulations 10(a), 10(d), 10(k), and 10(n) of CBLR, 2018 and also

imposed penalty of Rs.50,000/- besides forfeiture of entire security deposit.

8. In order to examine the above issues, and the divergent stand taken by both the parties, we would like to examine the specific Regulations which are involved in the above case. The relevant part of the CBLR, 2018 dealing with the obligations of the Customs Broker is extracted below:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

xxx xxx xxx xxx

(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;

xxx xxx xxx xxx

(k) maintain up to date records such as bill of entry, shipping bill, transshipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;

xxx xxx xxx xxx

(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;"

9. In respect of Regulations 10(a) *ibid*, the requirement is that the CB should have a written authorisation for engaging them as Customs Broker in transacting with Customs department in respect of import/export of goods. In this regard, we find from the records of the case that the appellants had obtained written authorisation letter dated 05.09.2020 from the Proprietor of M/s Swastik Enterprises and another letter dated 20.10.2020 from the proprietor of M/s Ganesh Export. In the impugned order, learned Principal Commissioner has agreed with the finding of the Inquiry Officer in holding that the CB has violated Regulation 10(a) *ibid*, on the ground that the Director of

the CB firm Shri Dnyanesh P Walunj, had not met the proprietor of M/s Ganesh Exports i.e., Shri Mangi Lal Gurjar before the detention of export goods who had also stated that he never signed any documents related to the said firm of Ganesh Exports; further, the Director of CB had stated that he had not met any person from M/s Swastik Enterprises. Thus, learned Principal Commissioner concluded in the impugned order that it would not have been possible for the CB to have taken any written authorisation from the two export entities and the CB had not submitted any copy of such authorisation till date to prove their claim before him. We find that though the aforesaid two letters of written authorisation has not been produced by the appellants before the learned Principal Commissioner during the inquiry proceedings, inasmuch as the same being available on record and that the same has not been refuted by the learned AR, this fact cannot be ignored. It is not the case of Revenue that the said written authorisation letters have been obtained through forgery by the appellants. Further, there is no requirement under Regulation 10(a) for the CB to have personally met the proprietor or any authorised person, for obtaining the written authorisation letters to indicate their legal authority for representing the importer/exporter before Customs department. Hence, we do not find any merit in the conclusion arrived at by the learned Principal Commissioner in respect of Regulation 10(a) *ibid*.

10. As regards Regulation 10(d) *ibid*, it is on record in the impugned order at paragraph No. 30(2) that the CB never met the proprietors of the export firms and thus the CB had not given any advice to his clients. Further, Shri Dnyanesh P Walunj, Director of appellants/CB firm had given in his voluntary statement dated 20.11.2021 before the Customs authorities that he knew that the export goods in respect of said two export entities belonged to a third person other than the exporters, which is in violation of the provisions of the Customs Act. However, the CB failed to bring these details to the notice of the Assistant/Deputy Commissioner concerned, so that the Customs department could have taken immediate necessary action against the deviant exporters. However, these fraudulent exports were identified and brought to fore only by the Customs SIIB investigation

subsequently. In this regard, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the export frauds, we rely on the judgement of the Hon'ble Supreme Court in affirming the decision of the Coordinate Bench of this Tribunal in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

"15. *In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-*

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."

In view of the above discussions and on the basis of the judgement of the Hon'ble Court in the case of *K.M. Ganatra* (supra), we find that the appellants have failed in their obligation as Customs Broker for bringing to the notice of the Customs department about the non-compliances in export transactions of these two export entities viz. M/s Swastik Enterprises and M/s Ganesh Export.

11. In respect of the obligation under Regulation 10(k), the learned Principal Commissioner had by placing reliance on the statement dated 20.11.2021 given by Shri Dnyanesh P Walunj, Director of appellants/CB firm before the Officers of SIIB, APSC, Mumbai Customs Zone-III stating that *on being asked about the verification*

records maintained by CB, he admitted that he did not have any records regarding address verification of the IEC holders. Thus, the learned Principal Commissioner came to the conclusion that the CB could not maintain proper record in respect of the exporter and their addresses. We find that as per Regulation 10(k) *ibid*, the nature of records that are required to be maintained up-to-date by a Customs Broker is mentioned therein as '*bill of entry, shipping bill, transshipment application etc., all correspondences, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner/Commissioner of Customs or the Deputy/Assistant Commissioner of Customs*'. Though it is possible that the verification of addresses of the exporters from where they are functioning could have been verified by a Customs Broker through correspondence with them and thus such details may form part of the records to be maintained, we find that this is not the case before us. It is not shown to us that there was such prescription for maintenance of records specified by the Principal Commissioner, and even if so, that the appellants had resorted to correspondence with the exporters for maintaining the same as a part of records required under Regulation 10(k). In view of the aforesaid factual position, we are unable to find force in the legality of the conclusion arrived at the impugned order holding that the appellants have violated the Regulation 10(k).

12.1. In respect of the Regulation 10(n), in the impugned order the Principal Commissioner had concluded that the appellants have violated the said Regulation, on the ground that they did not ensure and verify the antecedents of their client by using reliable independent means, and the appellants were working in a negligent manner, as they were aware that the export goods belonged to a third person other than the exporters. In this regard, we find that the requirement of Regulation 10(n) of CBLR, 2018 in the present from, *inter alia*, has been introduced for the first time in the year 2010, in Custom House Agents Licensing Regulations, 2004 (CHALR) by introduction of new sub-regulation under Regulation 13(o) of CHALR, by issue of Notification No.30/2010-NT dated 08.04.2010. The relevant portion of the said Notification is extracted below:

"[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION
3, SUB-SECTION (i)]
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 30 / 2010 - Customs (N.T.)

*New Delhi, the 8th April, 2010.
18 Chaitra, 1932 (SAKA).*

G.S.R.(E) –

In exercise of the powers conferred by sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, to amend the Customs House Agents Licensing Regulations, 2004, namely:- 1.

1. (1) These regulations may be called the Customs House Agents Licensing (Amendment) Regulations, 2010.

(2) They shall come into force on the day of their publication in the Official Gazette.

2. In the Customs House Agents Licensing Regulations, 2004, (hereinafter referred to as the said Regulation), -

(i) in regulation 8,

(a) in sub-regulation (1) for the words "twice every year", the words "once every year", shall be substituted;

xxx xxx xxx

(ii) in regulation 13, after sub-regulation (n), the following shall be inserted, namely:-

"(o) verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.";

xxx xxx xxx

[F. No. 502/5/2008 - Cus.VI]"

12.2. In explaining the changes brought through the aforesaid Notification the Central Board of Excise & Customs (CBEC) had also issued a Circular No. 9/2010-Customs dated 08.04.2010, the relevant portion of which is extracted below:

"(iv) Know Your Customer (KYC) norms for identification of clients by CHAs:

6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "Know Your Customer (KYC)" guidelines for CHAs so that they are not used intentionally or unintentionally by importers / exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent,

authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/ customer is enclosed in the Annexure. It would also be obligatory for the client/ customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/ trusts etc., and any two of the listed documents in the annexure."

"Annexure

Client/ Customer Identification Procedure

Features to be verified and documents to be obtained from clients/ customers

S. No.	Forms of organisation	Features to be verified	Documents to be verified
1	Individual	(i) Legal name and any other names used (ii) Present and Permanent address, in full, complete and correct.	(i) Passport (ii) PAN card (iii) Voter's Identity card (iv) Driving licence (v) Bank account statement (vi) Ration card Note: Any two of the documents listed above, which provides client/ customer information to the satisfaction of the CHA will suffice.
2	Company	(i) Name of the company (ii) principal place of business (iii) mailing address of the company (iv) telephone, fax number, e-mail address	(i) Certificate of incorporation (ii) Memorandum of Association (iii) Articles of Association (iv) Power of Attorney granted to its managers, officers or employees to transact business on its behalf (v) Copy of PAN allotment letter (vi) Copy of telephone bill
3	Partnership firm	(i) Legal name (ii) Permanent address, in full, complete and correct. (iii) Name of all partners and their addresses, in full complete and correct. (iv) telephone, fax number, e-mail address of the firm and partners	(i) Registration certificate, if registered (ii) Partnership deed (iii) Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf (iv) Any officially valid document identifying the partners and the person holding the Power of Attorney and their addresses (v) Telephone bill in the name of firm/ partners
4	Trusts, Foundations	(i) Name of trustees, settlers, beneficiaries and signatories (ii) Name and address of the founder, the managers, Directors and the beneficiaries, in full, complete and correct. (iii) Telephone and fax number, e-mail address of the trust, founder and trustees.	(i) Certificate of Registration, if registered (ii) Power of Attorney granted to transact business on its behalf (iii) Any officially valid document to identify the trustees, settlers, beneficiaries and those holding the Power of Attorney, founders/ managers/ directors and their addresses (iv) Resolution of the managing body of the foundation/ association (v) Telephone bill."

12.3. In the present form of sub-Regulation 10(n) of CBLR, 2018, the said earlier regulation 13(o) had been modified by adding the Goods and Service Tax Identification Number (GSTIN) as one more particular for verification by the Customs Broker with the advent of introduction of GST in 2017. On careful perusal of the above details, it transpires that the Regulations and the Board's circular provide that certain specific features of an importer/ exporter needs to be verified in terms of specified documents mentioned in Annexure to the said Circular dated 08.04.2010, in order to fulfill the obligations by a Customs Broker. In the present case, it is also on record that the export entities being proprietorship firms, the particulars regarding the legal name of the exporter firms and their addresses have been verified by the CB on the basis of specified documents. In this regard, we also refer to the Public Notice No.26/2019 dated 14.10.2019 issued by the Commissioner of Customs (Export), Air Cargo Complex informing the trade that the public notices issued in respect of 'verification of documents in respect of first time of import of goods' is *mutatis mutandis* applicable to 'first time export goods' also. We also find that in compliance with these instructions, the appellants Customs Broker had filed necessary documents in respect two exporters viz., M/s Swastik Enterprises and Ganesh Export, and the letter/approval has been given by the Office of the Deputy Commissioner of Customs, Precious Cargo Customs Clearance Centre, located at 'G' Tower, Bharat Diamond Bourse, Bandra Kurla Complex, Mumbai providing '*First time Export/Import approval in view of Public Notice No.08/2013 dated 17.09.2013*'. In respect of M/s Swastik Enterprises the approval was given by letter dated 21.08.2020 and for M/s Ganesh Export the approval has been given vide Note dated 24.05.2018, copies of which has been placed as records in this case. In the said reference, it is stated that based on the reference documents submitted by the appellants in respect of two exporters involved in this case viz. Swastik Enterprises and Ganesh Export, the said office of DC, Customs states that the request has been approved by the Competent Authority and the

exporters/Customs Broker is allowed to initiate for the first time import/export through Precious Cargo Customs Clearance Centre (INDPC4). Further, it is also on record that the GSTIN and IEC certificates have been issued to the said two exporters by the competent authorities properly and their identity has not been doubted by the department.

12.4. In this regard, we find that the Co-ordinate Bench of the Tribunal had specifically dealt with the issue of compliance with the obligations by a Customs Broker under Regulation 10(n) *ibid*, by its Final Order dated 18.11.2022 in Customs Appeal No. 51658 of 2021 in the case of Commissioner of Customs (Airport & General), New Delhi Vs. M/s Bright Clearing & Carrier Pvt. Limited. The relevant paragraphs of the above referred Order are extracted below:

*"6. We have considered the submissions on both sides. 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 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*

7. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade (DGFT) and the GSTIN is issued by the GST officers under the CBIC or by officers of the Government of India or under the Governments of State or Union territory. The question which arises is whether the Customs broker is required to satisfy itself that these documents or their copies given by the client were, indeed issued by the concerned government officers OR is the Customs Broker also required to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) of CBLR cannot be read to mean the latter as it would imply treating the Customs Broker as one who is competent and responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that actions by the Customs Broker under the CBLR prevail over the actions by

officers under the Foreign Trade (Development and Regulation) Act, 1992 (under which the IEC is issued by DGFT) and the Central Goods and Services Tax Act (or state GST Act) (under which the GSTIN is issued by the GST officers). In our view this is not a correct construction of the legal provision. Therefore, verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it satisfies itself that the IEC and the GSTIN were, indeed issued by the concerned officers. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. The presumption is that a certificate or registration issued by an officer or purported to have been issued by an officer was 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.

8. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have issued the certificate or registration correctly. It has been held by the High Court of Delhi in the case of *Kunal Travels* 2017 (3) TMI 1494 – Delhi High Court - that **"the CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect of clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area..... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e., KYC, etc. would have been done by the customs authorities....." (emphasis supplied).** Of course, if the Customs Broker comes to know that its client had obtained these certificates through fraud or misrepresentation, nothing prevents it from

bringing such details to the notice of Customs officers for their consideration and action as they deem fit. However, the Customs Broker cannot sit in judgment over the certificate or registration issued by a Government officer so long as it is valid. In these cases, there is no doubt or evidence that the IEC and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned.

9. 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. As per the Regulation, this identity can be established by independent, reliable, authentic:

- a) documents;*
- b) data; or*
- c) information*

10. Any of the three methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that it has to only conduct a physical verification 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 would be 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 independent 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 these cases, we are fully satisfied that the appellants have fulfilled this part of the obligation under Regulation 10(n).

11. 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 they are reliable, independent and authentic. Nothing in this clause requires the Customs Broker to physically go to the premises of the client to ensure that they are functioning at the premises. By their nature, Customs

formations are located 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. For instance, if an importer from a small town in, say, Madhya Pradesh imports goods through ICD Tughlakabad in Delhi, the Customs Broker operating in Delhi cannot be expected to leave his entire business and travel to that town to verify physically if the importer, indeed, is functioning from that address. If Regulation 10(n) is interpreted to burden the Customs Broker with such a responsibility, it will not only be far too onerous to the Customs Broker but it will also make it impossible for anyone in the country to import/export unless he/she can find a Customs Broker willing to travel to his/her town for physical verification. This Regulation cannot be read so as to cause such harassment to the Customs Brokers and to the importers/exporters. This 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 these cases, 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.

12. We further note 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 as discussed in the above paragraphs, 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.

13. In these appeals, 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 was not operating from that

address at all and the GST registration was wrongly issued, the responsibility rests on the officers who issued the GST Registration and not the Customs Broker. This wisdom in hindsight of the officers that the GSTIN was wrongly issued at that address cannot be held against the Customs Broker.

14. The appellants relied on 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 which were the Relied Upon Documents in the SCN to indicate as to why and how the GST registration was issued when the exporters did not exist at all. We also find that other documents were procured by the appellant which were also 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 just as GST Registration was issued by the jurisdictional officers.

15. Unless all these officers of various organisations (including the jurisdictional GST officer who issued the registration in December 2018) either acted fraudulently or carelessly, the above could not have been issued.

16. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, by efflux of time, when the GST officers went for verification, the situation changed. If so, it is a ground for starting a thorough investigation by the officer and is not a ground to revoke the licence of the Customs Broker who processed the exports. We also find that there is nothing in the SCNs to prove that the exporters did not exist or operate from the addresses when the Shipping Bills were filed.

17. On a query from the bench as to how the Customs Broker can be faulted when he relied on the IEC, GST Registration and several documents issued by the Government and if the exporters did not exist at all at the premises how these documents were issued by several Government officers, learned Departmental Representatives submitted **that officers issue these documents as per their mandate which does not include physical verification** of the business premises. They further clarified that in almost all these cases, the Registrations were issued based on online applications. The officers are not mandated to ensure that the exporter(s) existed and were 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 the documents.

18. Learned Authorized Representatives further submit that the case of **Kunal Travels** – 2017 (3) TMI 1494 – Delhi High Court cannot come to the aid of the appellant as that was

issued in the context of the erstwhile Custom House Agents Licensing Regulations, 2004 which, as it stood during the relevant time, did not have an obligation on the Custom House Agent similar to the one in Regulation 10(n) of CBLR 2018. A provision similar to Regulation 10(n) of CBLR, 2018 was later introduced as Regulation 13(o) of CHA Licensing Regulations, 2004 which was considered in the case of **Millenium Express Cargo** – 2017 (346) E.L.T. 472 (Tri. Del) by this Tribunal which decision was upheld by the High Court of Delhi. The ratio of this order should apply to this case.

19. We have examined the order in the case of **Millenium Express Cargo** and find that, that was a case where the cigarettes were smuggled concealed in a consignment of induction cookers and the Bill of Entry was filed by the CHA whose licence was then revoked for violation of Regulations 13(e) and 13(o) of CHA licensing Regulations, 2004. Of these, 13(o) is parimateria with CBLR 10(n) under consideration in this case. In the case of Millenium express cargo, **the CHA has not even ever claimed that it had verified the existence of the importer at the given address.** Paragraph 5 of this order is reproduced below:

5. We have considered the contentions of both sides. It is an admitted fact that the appellant had dealt with the importer M/s. Nikhaar Associates. It is also a fact that the importer was found to be non-existent. CHA Regulation 13(e) state that "a CHA shall 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". In the present case, there was no question of the appellant being in a position to impart any information to the client as the same was found non-existent. Also the weight of the container for which it filed bill of entry was in excess by 7.280 tonnes over the declared weight (5.051 tonnes) which should have come to the appellant's notice had due diligence been exercised. Thus the allegation of violation of Regulation 13(e) is sustainable. Further Regulation 13(o) ibid states as under : —

"A Custom House Agent shall verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."

C.B.E. & C. vide Customs Circular No. 9/2008, dated 8- 2- 2010 in order to avoid any ambiguity inter alia laid down the following requirements of verification and documents for the "individual" category to which the importer belonged being a proprietorship concern as claimed.

S. No.	Forms of organisation	Features to be verified	Documents to be verified
1	Individual	(i) Legal name and any other names used (ii) Present and Permanent	(i) Passport (ii) PAN card (iii) Voter's Identity card

S. No.	Forms of organisation	Features to be verified	Documents to be verified
		address, in full, complete and correct.	(iv) Driving licence (v) Bank account statement (vi) Ration card Note: Any two of the documents listed above, which provides client/customer information to the satisfaction of the CHA will suffice.

Thus the appellant was required to inter alia verify present and permanent address in full, complete and correct which the appellant did not do. Merely because the appellant obtained documents as per Column 4 of the above table does not tantamount to fulfilment of requirement of Column 3 relating to features to be verified because if that was so, then there was no need to have Column 3. As seen from Regulation 13(o) quoted above, the Customs House Agent is obligated to inter alia verify antecedent, correctness of Importer Exporter Code, identity of the importer and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The appellant has not even claimed that it had ever verified the existence of the importer at the given address. Obviously, the appellant failed to fulfil the requirement of Regulation 13(o) *ibid*.

20. **Millenium express Cargo** does not support the case of the Revenue since there is nothing on record to show that the exporters did not exist at the premises at the time of export or that the appellants were aware about the non-existence of the exporters when they filed the Shipping Bills. In fact, there is not even an assertion by the Revenue that on the day the Shipping Bills were filed the exporters did not exist at the premises. 21. As far as the documents issued by various Government officers are concerned the submission of the learned departmental representatives is interesting and needs a deeper examination. It is their submission that 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 and if it supports case of the Revenue in these appeals.

22. 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. 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. Similarly, as per the submission of the learned authorized representatives for the Revenue, GSTIN is also issued without any verification at all and through an automated process. So, one cannot rule out the possibility of an IEC and/or GSTIN being issued without the person even operating its business from the address. The IEC forms the foundation for the entire system of controls over imports and exports 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. As the Risk Management System (RMS) of the Customs Electronic Data Interchange permits majority of the exports without either assessing the 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.

23. However, **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 these appeals is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer.**

24. Learned Authorized representatives for the Revenue relied on the decision of a coordinate bench of this Tribunal in **Baraskar Brothers** that there is an obligation on the Customs Broker to conduct a physical verification. Firstly, there is nothing in the Regulation 10(n) about physical verification. It requires verification that the person is operating from that address and this verification can be done through independent, reliable, authentic, documents, data or information. Secondly, this decision of the coordinate bench in **Baraskar brothers** is contrary to the decision of the jurisdictional Delhi High Court in **Kunal Travels** which is binding on us.

25. We now proceed to examine details of these cases:

Appeal C/51658/2021- Bright clearing & Carrier Pvt. Ltd.

26. Show cause notice dated 23.12.2020 alleged that the appellant processed exports in respect of 31 non-existent exporters but verification was done only in respect of the following 3 exporters which form the basis of the entire case:

(i) *M/s Nipun Enterprises (07ABJGPG4747J1ZF)- RUD-2:* The report of the jurisdictional officer does not indicate the name of the exporter but indicates in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO and against S.No. 2 "Rental/owned"– Rented. Against the column titled "Recommendation about the bonafides of the entity verified:" "Non-existent exporter. NOC denied" and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Non-existent exporter".

(ii) *M/s Sunrise Impex (07AHNPN6921F1Z5)- RUD-3:* The report of the jurisdictional officer does not indicate the name of the exporter but indicates in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO. Against the column titled "Recommendation about the bonafides of the entity verified: "Non-existent. Not recommended" and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Not recommended as non-existent".

(iii) *M/s P K Exim (07GTGPK5284M1ZZ)- RUD-4:* The report of the jurisdictional officer indicates the name of the exporter and in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO. Against the column titled "Recommendation about the bonafides of the entity verified": "M/s. P K Exim was found non-existent at their registered address. M/s. PK Exim got GST registration on " and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Non-existent firm. ITC not admissible".

27. Inquiry Report dated 26.3.2021 found that the appellant has violated provisions of Regulation 10(n) of CBLR

28. Impugned order dated 18.6.2021 held that the appellant has taken necessary documents as per the KYC as per CBLR 2018 but failed to verify the actual functioning of the exporter concerned and has not satisfied the inquiry officer that they had made all possible efforts to verify the genuineness of the exporter. The appellant has been held to have violated Regulation 10(n) of CBLR 2018 and hence his licence was revoked under Regulations 14&18 read with Regulation 17(7) of CBLR 2018 and his security deposit of Rs. 5,00,000/- was forfeited and a penalty of Rs. 50,000/- was imposed on the appellant.

29. It appears from the verification reports that in two cases, the officers enquired not by giving the names of the exporters but enquired if an exporter with a particular GSTIN existed in that address. People and businesses are remembered by their names and not by their GSTIN or PAN or Voter ID Card number. If anyone goes to an area and enquires, for instance, if a person with a particular PAN lives hardly anyone would confirm. Interestingly, the reports also indicate that the premises were rented while at the same time indicating that the exporter was non-existent. It is not clear who, according

to the reports had rented the premises if the exporter did not exist at all.

30. The report in respect of Nipun Enterprises states NOC (No objection Certificate) denied. The report in respect of Sunrise Impex indicates 'Not recommended' and the report in respect of P K Exim states ITC (input tax credit under GST) not admissible. There is also nothing in the CBLR requiring the Customs Broker to seek, let alone, obtain any NOC from any officer to process exports of any exporter. Similarly, nothing in the CBLR requires any recommendation from any officer for a Customs Broker to process exports. Similarly, the admissibility of ITC under GST is to be examined by the jurisdictional officers and the Customs Broker has neither any power nor any duty to decide if the ITC is admissible. Thus, none of these three RUDs make out any case to show that the Customs Broker had not fulfilled its obligation under Regulation 10(n) of CBLR 2018.

31. Even if it is presumed that the officers had conducted the enquiry properly indicating the names of the exporters and found that the exporters had not existed on the day of verification, it is not clear if the exporters never operated from that premises and the GSTIN and the IEC were wrongly issued by the officers without verification or they shifted or closed after the GSTIN or IEC were issued. If so, it is not clear if the exporter had existed or not on the day the appellant obtained the KYC documents and processed the exports.

Appeal C/51665/2021- Star Carriers

32. Show cause notice dated 28.12.2020 alleged that the appellant processed exports in respect of 18 non-existent exporters but verification was done only in respect of the following 3 exporters:

(i) M/s Isha International (07AAHFI5290D1ZF)- RUD-2: Remarks of the jurisdictional officer is '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'.

(ii) M/s Prakash Industries (07AAWFP7599M1ZU)- RUD-3: Remarks of the jurisdictional officer is 'As verified by the team and proposed by the Assistant Commissioner and on perusal of documents submitted, the exporter-assessee M/s. Prakash Industries (GSTIN 07AAWFP7599M1ZU) does not appear to be bonafide'.

(iii) M/s Kavya Impex (07AIMPL4955B1Z7)- RUD-4: This report indicates that the exporter was not found to exist at the premises but further specifies the total value of exports within 9 months and older than 9 months and also gives details of remittances received. It further gives

the details of the bank account of the exporter and month wise transactions for a few months. It also confirms that physical copy of the PAN and IEC were provided.

33. Inquiry Report dated 26.3.2021 held that the appellant has violated provisions of Regulation 10(n) of CBLR, 2018

34. Impugned order dated 22.6.2021 revoked the licence, directed the licence to be surrendered immediately along with all F, G & H cards issued, forfeited security deposit of Rs. 50,000 and imposed penalty of Rs. 50,000/-.

35. Two verification reports in respect of this appellant state that the exporter is 'not bonafide'. The third verification is self contradictory inasmuch as it, on the one hand, states that the exporter does not exist at the place and on the other hand confirms that physical copies of PAN and IEC were provided during verification. It is not clear who has provided these documents if the exporter did not exist at that premises. The reports nowhere state that the exporters never functioned from those premises and the GSTIN were issued by the department to non-existent firms or they ceased to function from those premises after the GSTIN were issued. So far as the reports of the officers that the exporters were not bonafide' is concerned, nothing in Regulation 10(n) of the CBLR, 2018 requires the Customs Broker to obtain a certificate from any officer that the exporter is bonafide. In fact, it is not even clear what the officers meant that the exporters are not bonafide. If the officers report that some exporters are not bonafide, it does not establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n). The entire case of the Revenue based on which the impugned order was passed was these verification reports which nowhere establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n)."

12.5. From the above detailed analysis made in the above case law, it is clear that the appellants CB in this case cannot be held responsible in cases where they have verified the identity of the exporter through prescribed records. Further, in the present case the appellants have also obtained the first time export verification of the exporters conducted by the appropriate customs authorities and a specific approval has been given by the Competent Authority and the same has been communicated by the Deputy Commissioner of Customs, DC, stating that the exporters/Customs Broker is allowed to initiate for the first time import/export through Precious Cargo Customs Clearance Centre having Customs-EDI port code INDPC4. Thus, we find that the conclusion arrived at by the Principal Commissioner in the impugned order to the extent that the appellants have violated in

not fulfilling the obligation cast on them under Sub-regulation 10(n) is not legally sustainable.

13. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in revoking the license of the appellants and directing them to surrender the original customs broker license as well as ordering for forfeiture of the entire security deposit furnished by the appellants customs broker. However, in view of the failure of the appellants to fulfill the obligation under sub-regulation 10(d) as discussed in paragraph 10 above, we find that the impugned order is justifiable to the limited extent of imposition of penalty of Rs.50,000/- against them. In the result, the impugned order, in specific terms the orders at paragraph 35(ii), (iii) and (iv), is set aside allowing the appeal in favour of the appellants. Further, the order in imposing penalty of Rs.50,000/-, in specific terms the order at paragraph 35(i) is upheld, in view of the conclusion arrived by us at paragraph 10 of this order.

14. Therefore, by modifying the impugned order to the extent as indicated above, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 07.09.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha