

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

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 85570 OF 2024
WITH
CUSTOMS APPLICATION (MISC) NO: 85174 OF 2024
(on behalf of appellant)**

[Arising out of Order-in-Original No: 75/CAC/PCC(G)/SJ/CBS-Adj dated 28th February 2024 passed by Principal Commissioner of Customs (General), Mumbai.]

Rupali Logistics Clearing & Forwarding P Ltd
9 D Mello HOU, Sahar Village, Tank Pakhady,
Ville Parle, Opp. Fish Market, Mumbai-400 099. *... Appellant*

versus

Principal Commissioner of Customs (General)
New Custom House, Ballard Estate Mumbai - 400001 *...Respondent*

APPEARANCE:

Shri RV Shetty, Advocate for the appellant
Shri Krishna M Azad, Assistant Commissioner (AR) for the respondent

CORAM:

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 87520/2024

DATE OF HEARING:	14/06/2024
DATE OF DECISION:	13/12/2024

PER: C J MATHEW

In this appeal, M/s Rupali Logistics Clearing & Forwarding Pvt
Ltd challenges order¹ of Principal Commissioner of Customs (General),

¹ [order-in-original no. 75/CAC/PCC(G)/SJ/CBS-Adj dated 28th February 2024]

Mumbai for revoking of customs broker licence² along with forfeiture of security deposit under regulation 14 of Customs Brokers Licensing Regulations, 2018 as well as imposition of penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018.

2. The impugned proceedings were initiated as a consequence of show cause notice issued to M/s World Wide Export and others in connection with the export of overvalued goods to claim ineligible drawback for which fake and bogus bills of purchase from purported buyers other than actual suppliers were furnished in support. The enquiry authority held that the charges framed against them for violation of regulation 10(d), 10(e), 10(f) and 10(n) of Customs Brokers Licensing Regulations, 2018 stood proved and, thereafter, the consequences as set out above was visited on appellant .

3. According to Learned Counsel for the appellant, M/s Rupali Logistics Clearing & Forwarding Pvt Ltd had handled only a few of the consignments covered in the said investigation and had nothing to do with either the purchase of the goods or the declaration of value. It was also contended that the investigation had not established that the exporter did not exist which was the extent of their obligation to ascertain and that their dealings through a third party, if any, was not in breach of the Regulations inasmuch as such beneficial owner is also an

² [no. 11/2000]

exporter within the meaning of section 2(2) of Customs Act, 1962.

4. We have heard Learned Authorized Representative.

5. The appellant was alleged to have breached regulation 10(d) of Customs Brokers Licensing Regulations, 2018 - requiring them to advise client to comply with the provisions of the statute pertaining to exports and, in the event of non-compliance, to bring such to the notice of the designated authority. The portion of transactions prior to entering the consignments for export and filing of shipping bill does not come within the purview of activities for which licence has been issued under section 146 of Customs Act, 1962 to the customs broker. There is no allegation that any part of the process undertaken on behalf of the exporter by the appellant had involved breach of the provisions of Customs Act, 1962 or any other law.

6. Insofar as the alleged breach of 10(e) of Customs Brokers Licensing Regulations, 2018 requiring the customs broker to exercise due diligence in ascertaining correctness of information which is imparted to a client, it would appear that inappropriate construct has been placed on the misconduct intended to be deterred. It was erroneous on the part of the customs authorities to construe every obligation in the Regulations as intended to ensure that customs broker is surrogate for customs authorities even to the extent of having to instruct importer/exporter on the contents of the statute. On the

contrary, the licence issued to a customs broker is certificate of competency of the broker as reliably familiar with all aspects of clearance and it falls to the licensing authority to initiate action for any deficiency thereof owing to which the transaction of importer/exporter has been jeopardized. Consequently, this allegation may be levelled only in circumstances in which the importer/exporter is found to have been innocently led to breach of statutory compliance in any transaction and such circumstance is brought to the attention of the licencing authority. There is no allegation, nor any suggestion from the importer/exporter, that incorrect information has been imparted which led to acts of omission and commission on their part. The invoking of this provision in these proceedings are incorrect.

7. Insofar as regulation 10(f) of Customs Brokers Licensing Regulations, 2018 - requiring that broker shall not withhold information contained in any order, instruction or public notice - there is nothing on record, either in the imputation of misconduct or in the findings of the licencing authority, that the appellant had withheld anything from their clients. Breach of this obligation has been erected on the imputation of incorrect information having been furnished in the declaration. That, under section 50 of Customs Act, 1962, is responsibility of the exporter to customs authorities and it is only upon evidence that the incorrect declaration was attributable to failure on the part of the customs broker to provide any relevant order or instruction withheld from the client

and, that too, on such being adduced by the exporter in defence, that the charge may be brought to bear. That is glaringly absent here.

8. On the alleged breach of regulation 10(n) of Customs Brokers Licensing Regulations, 2018 - requiring a customs broker to verify certain details as well as identity and functioning of the client at declared address - the finding in the impugned order thus

'19.6.3 19.6.3 In this regard, I have gone through the CB written submission dated 15.01.2024 and it is pertinent to mention the following findings:

i. As per Regulation 10(n) of the CBLR9, 2018, it is duty of the CB verify functioning of their client at the declared address by using reliable, independent, authentic sources, on the other hand, despite the enough opportunities given to the charged CB, I don't find any documentary evidence to support the claim that they had indeed verified the credentials of the aforementioned exporter, including the functioning of the exporter at the declared address, utilizing trustworthy, independent, and authentic documents, data, or information such as speed post etc. and had neither provided records pertaining invoice raised and payments received nor the bank statement for having received payment from which can be inferred that they never directly interacted with the exporter M/s. World Wide Export, concerning the transaction. Further, I find from the investigation that Shri Moize Ahmed Ali Angoothiwala, partner at M/s World Wide Export, admitted in his statement dated 09.03.202 that their firm don't have any warehouse.

Therefore, there is no concrete evidence in CB' argument that they had followed the Regulation 10(n) of the CBLR, 2018 by stating they had checked the IEC, and in year 2015 there was no CGST. The CGST was introduced in 2017. They checked the PAN, Visited

the office personally to verify the address, and filed KYC with all the documents. Hence, in view of the above facts, I don't find any ground in the CB submission in this regard.

19.6,3 On gone through the facts on records, I find that there is no denying the fact that the Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. have not been careful and not diligent in undertaking the KYC verification of the exporter and accepted documents for namesake, which they did not verify and therefore made themselves liable for penal action for violation of Regulation 10(n) of the CBLR, 2018.'

appears to have stemmed from the licensing authority placing onus on the customs broker to evince discharge of the obligation thereof. It puzzles that such onus can be shifted; it was for the licensing authority to show, from the facts and circumstances, that such verification had either not been undertaken or that inference of such failure is apparent therefrom. In the absence of any allegation that goods and service tax identification number (GSTIN) or the import-export code (IEC) was incorrect or that either client was fictional or did not operate at the declared address such presumption is not appropriate.

9. In view of our findings above, we find no merit in the impugned order which is set aside.

(Order pronounced in the open court on 13/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*