

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85244 of 2024

(Arising out of Order-in-Original CAO No. 60/CAC/PCC(G)/SJ/CBS-Adj dated 01.01.2024 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Skystar Clearing and Forwarding Pvt. Ltd.

.....Appellants

(CB License No. 11/1043)
No.323-B, C-Wing, Eastern Business District
Neptune Magnet Mall, LBS Road,
Near Mangatram Petrol Pump, Bhandup (West)
Mumbai – 400 078.

VERSUS

**Principal Commissioner of Customs (General),
Mumbai**

.....Respondent

New Custom House, Ballard Estate,
Mumbai-400 001.

Appearance:

Shri Anil Kumar Mishra, Advocate for the Appellants
Shri Krishna Murari Azad, Authorized 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/87580/2024

Date of Hearing: 27.08.2024

Date of Decision: 27.08. 2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Skystar Clearing and Forwarding Private Limited, Mumbai (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/1043 assailing Order-in-Original CAO No. 60/CAC/PCC(G)/SJ/CBS-Adj dated 01.01.2024 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai

Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. An offence report in the form of Investigation Report F. No. SG/Misc-101/2016-17 CIU/JNCH dated 15.12.2022 was received in Customs Brokers (CB) Section, New Custom House (NCH), reporting violation of CBLR, 2018. Preliminary investigation revealed that two Shipping Bills (S/Bs) No. 2014912 and 2014929, both dated 02.11.2016, was filed by an exporter M/s Neminath Industries, Thane with fake/non-genuine Factory Stuffing Permission; further, Central Excise invoices submitted to the Customs authorities at the port of export for effecting export of consignment was different from the invoices produced to Central Excise department at the time of factory stuffing and the name of exporter was mentioned differently as M/s Arihant Industries and the quantity and net weight also varied. Therefore, the matter was referred to Central Intelligence Unit for detailed investigation.

2.2 Further, search conducted at the business premises of the exporter M/s Neminath Industries revealed that the Gala No.6 premises was non-existent and at Gala No.1 certain documents pertaining to such exporter was recovered under panchanama proceedings dated 11.11.2016. Further investigation conducted on all such export firms indulging in several fake Factory Stuffing Permissions (FSPs) revealed that out of total 1474 SBs filed by five exporters, only 384 S/Bs were using genuine FSPs and the remaining 1090 S/Bs were filed using forged FSPs, invoices, packing lists and central excise examination reports. It was found that the appellants CB firm had played the role of facilitating fraudulent exports by mis-use of Factory Stuffing permission, forgery of customs documents with the intention of availing undue drawback and other export incentives in a fraudulent manner. The investigation report mentioned the role of various Customs Brokers including the appellants, as the persons who were responsible for facilitating the subject fraudulent exports.

2.3 On the above basis the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10(a), 10(d) and 10(n) of CBLR, 2018. Accordingly, he had initiated show cause proceedings by issue of notice No. 14/2022-23 dated 25.05.2023 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.4 Upon completion of the inquiry, a report dated 18.10.2023 was submitted by the Inquiry Authority concluding that the appellants CB has failed to adhere to/abide by the provisions of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 01.01.2024 under Regulations 17(7), 14 and 18 *ibid*, for revocation of CB License of the appellants and for forfeiture of entire amount of security deposit, besides imposition of penalty on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate for the appellants contends that all the allegations of violation of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018 have been countered by them. The main argument advanced by the Learned Advocate against the impugned order dated 01.01.2024, is that the main allegation of violation under the Customs Act, 1962 on the appellants CB firm along with exporters in separate SCN proceedings for imposition of penalty under Section 114 *ibid* was decided in Order-in-Original No. 1077/2023-24/ADC/NS-II/CEAC/CAC/JNCH dated 29.11.2013 by exonerating the appellant CB firm from those primary charges. Hence, learned Advocate pleaded that the consequential action taken under CBLR proceedings on the basis of investigation report informing such primary charges does not stand legal scrutiny. He further added that in respect of similar allegations in respect of one another CB's case vide Order-in-Original No. CAO No. 57/CAC/PCC(G)/SJ/CBS-Adj dated 22.12.2023, the CB license was not cancelled on the ground that *"it cannot be substantiated that the CB had connived with the exporter in the said fraud and hence mens rea could not be established."* Therefore, he claimed that the same would also apply to their case, as the action taken by the Commissionerate arise from the same investigation report.

3.2 Further, learned Advocate also stated that the appellants CB did not had any prior knowledge about the fact that the exporter is going to mis-use the export documents; they had received the documents for through logistics operator Shri Jaswant Karasi, Business Head of M/s IFX Logistics on behalf of exporters viz., M/s Arihant Industries, M/s Neminath Industries and M/s Aadinath Industries and not directly from the exporters, and they had duly verified the existence of the exporters through the statutory documents in the manner prescribed under CBLR. He further stated that for the acts of

misdeeds done by the exporters, the appellants CB cannot be held liable. Thus he claimed that the appellants did not contravene these Regulations *ibid*.

3.3 In support of their stand, the learned Advocate had relied upon the following decisions of the Tribunal and the judgement of the Hon'ble High Court of Delhi, in the respective cases mentioned below:

(i) *K.S. Sawant & Co. Vs. Commissioner of Customs (Gen.), Mumbai* - 2012 (284) E.L.T. 363 (Tri.-Mumbai)

(ii) *Perfect Cargo and Logistics Vs. Commissioner of Customs (Airport & General)* - 2020 (12) TMI 649 - CESTAT, New Delhi

(iii) *Kunal Travels (Cargo) Vs. Commissioner of Customs (Import & General)* - 2017 (354) E.L.T. 447 (Del.)

(iv) *Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* - 2016 (338) E.L.T. 725 (Tri.-Del.)

(v) *Sholk Logistics Private Limited Vs. Principal Commissioner of Customs (General), Mumbai* - 2023 (12) TMI 1154 - CESTAT, Mumbai

(vi) *The Principal Commissioner of Customs (General) Vs. Interport Impex Private Limited* - 2017 (346) E.L.T. 223 (Bom.)

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that all the violations under sub-regulations (a), (d) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for export from Shri Jaswant Karasi, Business Head of M/s IFX Freight & Logistics Pvt. Ltd. on behalf of exporters, who are neither IEC holder nor exporter or their representative; they never verified the authenticity of KYC documents properly and had not cross checked or conducted proper verification of existence of exporter at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellants CB's license, imposition of penalty and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law.

5. We have heard both sides and perused the case records.

6.1 The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018 or not. The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 10(a), 10(d) and 10(n) *ibid*, and hence there are three distinct charges framed against the appellants. We find that the

Regulation 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and export of goods. These are as follows:

"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;

...

(d) advise his client to comply with the provisions of the Act 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;

...

(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;"

6.2. We find that the Principal Commissioner of Customs had come to the conclusion that the appellants CB had violated the above stated sub-regulations (a), (d) and (n) of Regulation 10 ibid as they did not receive the authorisation and export documents directly from the exporters and also did not bother to verify whether such authorisation have been issued by the exporter; appellants CB did not have any interaction with the IEC holder/exporter; they did not meet the exporter personally and had knowledge of the exporter using fake Factory Stuffing Permissions, but had no direct contact to advice their client to comply with rules and regulations; and they also did not properly verify the KYC documents, which prove that they were not careful and not diligent in undertaking the KYC verification. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7. We would now take up for examination each of the alleged violations of CBLR, 2018, one by one, as follows. In respect of Regulation 10(a) the adjudicating authority had found that the appellants CB did not personally meet the owner of exporters and obtained the documents from one Shri Jaswant Karasi, Business Head of M/s IFX Freight & Logistics Pvt. Ltd.; and thus he concluded that the appellants CB was neither in contact with the exporter nor verified whether the exporter had issued such authorisation to

the intermediary. Hence he concluded that the appellants CB have violated Regulation 10(a) *ibid*.

8.1 From the facts of the case and the voluntary statements given by various persons during investigation of the case, it is seen that Shri Sandip K Aher, Director of the appellants CB firm had obtained the export documents for exports in respect of 19 containers of exporter M/s Arihant Industries from one Shri Jaswant Karasi, Business Head of M/s IFX Freight & Logistics Pvt. Ltd., who had in turn known the exporters M/s Arihant Industries and M/s Aadinath Industries during the period June, 2016 till September, 2016. All the documents required for export such as invoice, packing list, Self-Declaration Form, Factory Stuffing Permission etc., were received from exporter through the said Shri Jaswant Karasi, by e-mail and the original documents were received through the driver of the container trailer carrying export goods. Hence, they did not suspect anything wrong in such documentation.

8.2 The impugned exports involving alleged fake Factory Stuffing Permission were exported through 19 containers in respect of which all the S/Bs had been duly processed at the port of export by the Customs authorities. Thereafter, voluntary statement from Shri Tarun Kothari, who had operated the export firms involved in such fraud of using fake Factory Stuffing Permissions, was recorded on different dates in December, 2016/ January-February, 2017. Subsequently, Shri Sandip K Aher, Director of the appellants CB firm was called for participating in the investigation only on 11.06.2021 for recording his statements under Section 108 of the Customs Act, 1962. However, the action under CBLR was taken only after passage of long time on 25.05.2023 by issue of SCN. Further, the allegation against the exporter is that they attempted to avail ineligible export incentives such as Drawback, export incentives upon export of goods and that the appellants CB firm had played active role. However, it is also seen from the submission made by the appellants and the paragraph 51(xxiv) of the Order-in-Original dated 29.11.2023 in the main customs offence case, that the adjudicating authority had refrained from imposing penalty *inter alia* on the appellants under Section 114(iii) of the Customs Act, 1962. Therefore, it clearly transpires that the appellants have not been imposed with any penalty on account of such export violations. It is also on record at paragraph 16.2 of the impugned order, the learned Principal Commissioner had recorded that the adjudicating authority in the customs case against customs offences had

refrained from imposing any penalty under Section 114(iii) of the Customs Act, 1962 on the appellants CB firm. Thus, it is seen that alleged ineligible availment of export benefits is solely on account of the action taken by the exporter such as filing wrong declaration for claiming ineligible export incentives or the failure on the exporter to obtain export proceeds within a reasonable time frame. There is no role of Customs Broker in the above activities of the exporter. Further in respect of the exports that have taken place in November, 2016 necessary investigation was initiated in December, 2016, but the investigation against the appellants CB was started only during May, 2023. Thus, there is no ground for such delayed action by the department, particularly when there is no role for the appellants CB in the activities of the exporter.

8.3 We also find that on the above issue, the Tribunal in the case of *K.S. Sawant & Co.*(supra) had already held that accepting the documents through logistics operator is not barred by CBLR. The relevant paragraph of the said order is extracted below:

"5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of Principal Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Principal Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established. As regards the violation of Regulation 13(a), the adjudicating authority himself has observed that the "I have no doubt to say that the CHA might have obtained the authorisation but it is surely not from the importer. Therefore, the authorisation submitted is not a valid one". This finding is based on a presumption. Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a). ... The question now is whether revocation of licence is warranted for such a violation. In our view, the punishment should be commensurate with the gravity of the offence. Revocation is an extreme step and a harsh punishment, which is not warranted for violation of Regulation 13(b). Accordingly, we are of the view

that forfeiture of security tendered by the appellant CHA is sufficient punishment and revocation is not warranted. Accordingly, we set aside the order of the revocation and direct the Principal Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA.”

8.4 It is also on record that the exporter M/s Arihant Industries had vide their letter dated 08.06.2016 addressed to the Assistant Commissioner of Customs, had given the letter of authority to the appellants CB to file necessary declarations and clear the import/export goods at various customs stations in Mumbai, Nhava Sheva. Therefore, in the absence of any document to prove the claim of having not obtained necessary authorisation from the exporters, which involve mis-declaration of export goods, the findings given by the learned Principal Commissioner of Customs in the impugned order for violation of Regulation 10(a) *ibid*, is difficult to be proved for fastening such liability on the appellants CB, for holding them responsible for such alleged fraudulent exports by certain exporters.

9. In the instant case, the ineligible claim for export incentives was found by the department only on the basis of specific investigation conducted by the CIU of JNCH customs authorities, and hence the appellants CB cannot be found fault for the reason that they did not advise their client exporter to comply with the provisions of the Act. Further, the impugned order also indicated that out of 1474 S/Bs filed by five exporters, during the period 2015-2016, in only 383 cases, the S/Bs were filed with genuine FSPs issued by Customs, JNCH and in the remaining 1090 S/Bs were filed using fake documents, and these consignments were also allowed by customs authorities at the port of export. Thus, when the customs authorities were not aware of the non-genuineness of the documents, there is no possibility for the appellants CB to be aware of the same, and to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of exported goods. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

10.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(n) *ibid*, on the ground that the appellants had never met the exporter/IEC holder, and they were not careful and diligent in undertaking the KYC verification process about the background of exporter.

10.2 We find from the records, that the appellants CB had obtained the KYC documents from the exporter M/s Arihant Industries vide their authorization letter dated 08.06.2016, Factory Stuffing Permission No.534/2015-16 dated 07.12.2015; from the export M/s Arihant Industries Factory Stuffing Permission No.171/2016-17 dated 18.05.2016; and verified the existence of both the exporters through the Certificate of Importer-Exporter Code issued by the Zonal Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India, Mumbai indicating the name along with address, name of the proprietor; PAN Card of the proprietor/exporter; signature and account verification letter from Canara Bank, Bhayander West, Thane.

10.3 In this regard, we find that CBIC had issued instructions in implementing the KYC norms for verification of identity, existence of the importer/exporter by Customs Broker in Circular No. 9/2010-Customs dated 08.04.2010, and verification of any two documents among specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the appellants CB had obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding of the alleged violation of Regulation 10(n) *ibid* by the appellants in the impugned order on the above issue.

10.4 We find that in the case of *M/s Perfect Cargo & Logistics Vs. Principal Commissioner of Customs (Airport & General), New Delhi* 2021 (376) E.L.T. 649 (Tri. - Del.), the Tribunal had decided the issue of KYC verification of the importer/exporter by the Customs broker and the requirements specified in the CBLR, 2018.

"34. The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Principal Commissioner noticed in the impugned order that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Principal Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions.

The finding recorded by the Principal Commissioner that the required documents were not submitted is, therefore, factually incorrect.

35. The Principal Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations."

10.5 Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the appellants CB is not an officer of Customs who would have an expertise to identify mis-declaration of goods. The relevant portion of the said judgement is extracted below:

"The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to 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."

10.6 From the above, we also find that the above orders of the Tribunal and higher judicial forum are in support of our considered views in this case in respect of the compliance with respect to Regulation 10(n) *ibid*.

11. 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 revocation of the CB license of the appellants; for forfeiture of security deposit and for imposition of penalty, inasmuch as there is no violation of regulations 10(a), 10(d) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record.

12. Therefore, by setting aside the impugned order dated 01.01.2024, we allow the appeal in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)