

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH, COURT NO. 4

**CUSTOMS APPEAL NO. 50241 OF 2021  
WITH  
CUSTOMS CROSS NO. 50167 OF 2021**

[Arising out of Order-in-Original No. 83/MK/Policy/2020 dated 05.10.2020 passed by the Commissioner of Customs (Airport & General), New Delhi]

**COMMISSIONER, CUSTOMS (AIRPORT &  
GENERAL)NEW CUSTOMS HOUSE-NEW  
DELHI-110037**

**Appellant**

Vs.

**M/S ARADHYA EXPORT IMPORT  
CONSULTANTS PVT LTD**

**Respondent**

103, 1<sup>st</sup> Floor, Park View Plaza, Plot No. 9  
LSC-3, Sector-6, Dwarka, New Delhi-110075

**Appearance:**

Present for the Appellant :Shri Munshi Ram Dhania, Authorised Representative  
Present for the Respondent: Shri Ram Awatar Singh, Advocate

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER ( JUDICIAL )**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 51380 /2023**

**Date of Hearing : 03/08/2023**

**Date of Decision: 03/10/2023**

**DR. RACHNA GUPTA:**

1. Present is the common order for the aforementioned Customs Appeal No. 50241 of 2021 and cross objections filed by the respondent/assessee. The present appeal has been filed, pursuant to Review Order No. 116/2020-21 dated 04.01.2021, assailing the order-in-original bearing no. 83/2020 dated 05.10.2020 vide which the order of suspension of the respondent's licence was revoked.

2. The facts relevant for the present adjudication are as follows:
- (i) There was an investigation report dated 28.07.2020 prepared by Nhava Sheva Preventive Unit (NSPU), Mumbai against an exporter M/s Fine Overseas having IEC No. BREPS9544C to have fraudulently availed IGST drawback and refund by using bogus manufacturing registration, GST invoice, where no GST duty was being paid to the exchequer but inadmissible refund was being claimed, on the basis of the said bogus invoices which were being disbursed equally to the FOB value of the shipping bill. It was revealed that the said exporter having declared IEC address as Barwalan, Shiv Shakti Ganga Mandir, Moradabad-244001, had filed 08 shipping bills during the period August and September, 2018 with FOB amount of Rs. 2,10,14,834.8/- and claimed the IGST refund of Rs. 54,90,378/- for the export of goods i.e. "Clutch Plates & Glass Items, decor glass". The appellant also got it disbursed from the Government Exchequer. The said amount has been withdrawn to the current bank accounts of appellant with M/s Kotak Mahindra Bank Limited, Muradabad and M/s Allahabad Branch, Civil Lines Muradabad.
- (ii) The exporter had two consignees/buyers based in UAE. It was also revealed that all the said 8 shipping bills were filed through the Customs Broker, namely, M/s Aradhya

Exporter & Import Consultant Pvt. Ltd., the present respondent. The said customs broker was holding a customs broker licence bearing no. 33/2017 issued by New Delhi Customs valid upto 12.04.2027. However, based upon the said licence, he was also issued licence bearing no. 11/2439 to work in Mumbai Customs also. The Mumbai licence was also revoked vide order no. 15/202021 CBS dated 07.09.2020 and pursuant to the said order the Delhi Commissionerate also vide Order No. 73/2020 dated 15.09.2020 had suspended the CB licence No. 33/2017. Subsequently, vide Order-in-Original No. 83 dated 05.10.2020 the said suspension has been revoked and the same was reviewed vide the aforementioned review order. Pursuant to the said order, the impugned appeal has been filed by the Department with the prayer for setting aside the said Order-in-Original dated 05.10.2020. The respondent CB have also filed the Cross Objections in this appeal on 16 March, 2020 praying for the dismissal of the Department's appeal.

3. The arguments on both sides have been heard.
4. It is mentioned by Ld. Departmental representative (DR) that the present case is pursuant to a specific intelligence received by NSPU Mumbai about the specific exporter M/s Fine Overseas. When NSPU, Mumbai wrote a letter dated 18.1.2019 to CGST, Meerut requesting to conduct verifications and search at the office premises

of the said exporter and also to serve the summons to the Director of the exporter asking him to appear before the NSPU, Mumbai. The Meerut Commissionerate vide letter dated 04.02.2019 responded that the exporter, M/s Fine Overseas, was not found existing at the given address and on inquiry about the said addressee, nobody could tell about the present whereabouts. Resultantly, the summons could not be served. It is impressed upon by Ld. DR that the said report was sufficient evidence proving the non-existence of the exporter at the address declared in IEC.

5. Learned DR further impressed upon that as per RBI remittance report, expected realization of exports by M/s Fine Overseas was Rs. 2,10,14,836/- against 8 shipping bills but the remittance of only 41,575 USD against one shipping bill was realized, as per the RBI data integrated in ICES. It is impressed upon that these observations were sufficient to hold that the exports vide the above mentioned shipping bills were made not to realise the export proceeds, but to claim IGST refund by using bogus GST registration, bogus GST invoices and IEC. The exporter had already fraudulently claimed IGST refund, despite the fact that the same was ineligible and more so because there is non-realization of full amount of export proceeds from the foreign buyer. Investigations have sufficiently proved that the exporter firm was existing only on papers. It was created in the name of one Shri Sirajul Kallu, the IEC was obtained and the bank account was also opened in the name of said Shri Sirajul Kallu, who had never appeared before the authorities. One Shri Zoheb Moin, had appeared for the exporter as its authorized representative and twice

his statement was recorded. It is submitted that he could not satisfactorily explain the findings of the investigation report. The customs broker also failed to appear except that his G-Card, Shri Vinay B. Rane appeared and got his statement recorded. Perusal of these statements is sufficient to show that the customs broker has failed to exercise the due diligence and to verify the correctness of IEC and GSTN. The licence was rightly suspended vide order dated 15.09.2020. The suspension has wrongly been revoked vide the impugned order-in-original dated 05.10.2020. The said order is, accordingly, liable to be set aside for the ground mentioned in the Review Order dated 04.01.2021 and the grounds taken in the impugned appeal.

6. Learned authorized representative has relied upon following authorities;

- (i) **K M Ganatra [2016-TIOL-13-SC-CUS]**
- (ii) **Millenium Express Cargo Pvt Ltd. Vs. Commissioner of Customs, New Delhi [2017 (346)ELT 471 (Tri.-Del)]**

7. While rebutting these submissions, Ld. Counsel of the respondent CB mentioned that the exporter's authorized representative Shri Zoheb Moin/ the Manager appeared before the Mumbai Customs on 04.04.2019. He tendered his statement along with rent agreement of his firm's premises supplier's tax invoices, supplier's e-way bills and also stated that his firm is regularly filling GST returns.

8. As regard to the remittances, it is impressed upon that remittance of only one shipping bill has been realized. It is very much apparent from the statement of the G-Carg holder of CB Shri Vijay B. Rane that CB got KYC documents from the exporter. Hence, the order dated 15.09.2020 has wrongly held that CB has failed to comply with Regulation 10(e) and 10(n) of CBLR, 2018. Ld. Counsel impressed upon that based on both these statements, the suspension has rightly been revoked vide order dated 15.10.2021 order under challenge.

9. It is submitted that the report of Meerut GST about non-existence of the exporter is a false report which is evident from the letter of Meerut GST dated 25.10.2019 served to the exporter at the same address pursuant where to exporter appeared before the customs on 04.04.2019. It is impressed upon that otherwise also customs broker is not liable to physically verify the exporter's premises. Learned counsel further brought to the notice the other evidences as were produced by the customs broker before the adjudicating authority during personal hearing as was held in terms of Regulations 16 (2) of CBLR, 2018. These include the record of postal authorities of delivering customs broker's speed post to the exporter at the same address as mentioned in IEC. Also the proof from Blue Dart courier which picked up a parcel from the said exporter's address and delivered the same to the customs broker's Delhi address. Otherwise also the respondent CB has taken PAN Card, bank account statement from the exporter which is sufficient KYC, compliance as prescribed in Board Circular No. 09/2010 dated 08.04.2010. It is

thus impressed upon that the allegations that CB handled exports of non-existent exporter involving inadmissible IGST refund of more than Rs. 54.90 lakhs was wrongly been made the basis for suspension of the CB's licence by the Mumbai Commissionerate. The suspension has rightly been revoked for want of non-involvement of the customs broker who duly complied with the KYC norms and exercised requisite due diligence. Thus, it has rightly been held in the order under challenge that CB has not violated Regulation 10(e) and 10(n) of CBLR, 2018. While relying upon the decision of this Tribunal in the case of **Commissioner of Custom, New Delhi vs. M/S CRM Logistics Pvt Ltd.** vide **Final Order No. 52053-52054/2021** dated **03.12.2021** the appeal is prayed to be dismissed.

10. Having heard the rival contentions and perusing the entire record, we observe and hold as follows.

11. The question to be adjudicated is:

- (i) whether the respondent customs broker M/s Aradhya Export has violated Regulation 10(e) and 10(n) of CBLR, 2018. To adjudicate the same we observe following to be admitted and apparent facts on record;
- (ii) Respondent CB was granted licence initially by Delhi Customs under Regulation 9 of CBLR, 2018. Based on the said licence he was issued licence by Mumbai Customs also to function at Mumbai ports.

- (iii) The CB has cleared 8 shipping bills for M/s Fine Overseas that too during a short period of August, 2018 to September, 2018 with FOB amount of Rs. 2,10,14,836/-
- (iv) The IGST refund of Rs. 54,90,378/- with respect to 8 shipping bills has already been claimed and availed from the Government Exchequer.
- (v) Remittance of Rs. 41,575 USD against one shipping bill was realized as per RBI data integrated in ICES.
- (vi) The exporter could not be served as was not found existing when summons were issued by the Meerut Commissionerate pursuant to the letter dated 18.01.2019 from NSPU Mumbai.
- (vii) The director of the exporter Shri Sirajul Kallu had never ever appeared before the customs authority. One Shri Zoheb Moin represented himself as the manager of the exporter in Mumbai Customs who appeared on 04.04.2019 and got his statement recorded on 04.04.2019 and on 12.07.2019 also.
- (viii) The proprietor of the customs broker, namely, Shri Rajesh Gupta, also had never appeared either before the Mumbai Customs or before the Delhi Customs. It is only his G-carg holder, namely, Shri Vijay B. Rane who got his statement recorded.

- (ix) The G-card holder, Shri Vijay B. Rane stated about receiving the documents of M/s Fine Exports from their agent Shri Imran Khan who also did not appear before the authorities.
- (x) In paragraph 14 of order dated 15.09.2020 it is also found recorded that Mr. Vijay B. Rane acknowledged that he was consciously and intentionally involved in assisting the impugned fraudulent exports in the name of bogus exporter firm to claim ineligible IGST refund amount.
- (xi) Based on these apparent/ admitted facts that the licence of respondent CB was suspended vide order dated 15.09.2021 passed under Regulation 16(1) of CBLR, 2018. However, the said suspension has been revoked vide the order under challenge dated 05.10.2021 passed under Regulation 16(2) to CBLR, 2018.

Two obligations of CB are in question in the present case. The obligation under Regulation 10 (e) and obligation under 10(n). In view of above admitted facts Regulation wise findings of ours are as follows:

**REGULATION 10 (e)**

Regulation 10(e) reads as follows:

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

12. For the violation of this Regulation what is important to be brought on record is that there was certain information imparted by the customs broker to the exporter and that the said information was incorrect. We do not find from the above facts nor from the other record of the impugned appeal that there was any such information given by the CB to the exporter which was later found false. These observations are sufficient for us to hold that violation of Regulation 10(e) of CBLR, 2018 is not apparent against the CB. The original adjudicating authority in paragraph 25.1.1 of order under challenge has appreciated the reply of the customs broker where it was stated that CB has never imparted any incorrect information to the exporter nor even it is apparent from the statement of the G-card holder of CB that certain information was imparted to the exporter which was later found false. Once there is nothing on record to show not even in the show cause notice as to what information was imparted by CB to the exporter alleging violation of Regulation 10(e) has no meaning. Hence, we have no reason to differ from the findings of the order under challenge with respect to the alleged violation of 10(e) CBLR-2018. In the cross objections filed by the respondent/assessee it has been conceded that there is no basis for alleged violation of Regulation 10(e) of CBLR. Findings to that extent in the order under challenge are confirmed.

**REGULATION 10(n)**

Regulation 10(n) reads as follows:

**10(n)** verify correctness of importer Exporter Code (IC) number, goods and service 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;

As per Board Circular No. 09/2010-Cus dated 08.04.2010 it is mandatory for the CHA to verify the genuineness of the Exporters/ firms at the declared address by using reliable, independent, authentic documents, data or information by submitting any two documents listed in the Annexure of the said Circular.

13. This regulation mandates a vigilant duty upon the customs broker that whosoever the exporter and importer reaches him for facilitating the respective import or export, he is supposed to verify the correctness of their import export code (IEC), Goods and Service Tax Identification number (GSTIN) along with other identity proofs. Additionally he has to ensure that the said importer/exporter is existing at a declared address. No doubt, there have been catena of decisions holding that customs broker is not liable to physically inspect the premises existing at the address given in IEC. But from the above quoted provision & circular, it is clear that the customs broker has to use reliable independent and authentic information to ascertain the correctness of the particulars of IEC more particularly address mentioned therein.

14. As apparent from the above noted facts of this case, it is coming as an admission of CB's, G-card holder about the address as mentioned in IEC that the premises of the exporter was never visited

by the customs broker. The documents required for export were also used to be received from the agent of the exporter, namely, Shri Imran Khan. Exporter has never appeared. Said Shri Imran Khan has not been produced either by the exporter or by the CB. The onus was of CB to prove that the exporter was conducting its business through Shri Imran Khan at the premises as mentioned in IEC or at least to prove that he has verified the authority of exporting firm in favour of Shri Imran Khan. Nothing has been produced by CB to prove the same except the postal receipts between the two addresses. Otherwise also merely because CB obtained requisite documents does not tantamount to fulfillment of requirement of the Regulations relating to the features to be verified. The CB has not even claimed that it verified the existence of importer except stating about receiving documents from one Shri Imran Khan. There is apparent violation of Regulation 10(n). We draw our support from the decision of this Tribunal in the case of **Millenium Express Cargo Pvt Ltd. Vs. Commissioner of Customs[2017 (346) ELT 471 (Tri.-Del.)]**.

15. Further, we observe that it is also coming from the apparent admission in the statement of G-card holder of CB that the CB was consciously and intentionally involved in assisting the fraudulent exports, to our opinion the delivery/ the service receipts from or at the address given in IEC has no meaning. It was more so required for CB to bring on record the cogent evidence when so named Shri Imran Khan failed to appear before the investigating agency and Adjudicating authorities. There is no evidence produced by CB to show that Shri Zoheb Moin was ever authorized by M/s Fine overseas

or that CB himself was ever in touch with said Shri Zoheb Moin. The statement of G-card holder, as has been taken as basis by the adjudicating authority while revoking the suspension, is also silent about Shri Zoheb Moin to ever been the authorized person of the exporter. Exporter has also not appeared to acknowledge Shri Zoheb Moin as its authorized person. Nor any authority in favour of Shri Imran Khan has been produced by respondent CB. Mere courier receipts to & fro CB and exporter address are not sufficient to prove existence of exporter at the address mentioned in IEC. In such circumstances, communication from Meerut Commissionerate dated 04.02.2019 informing that M/s Fine Overseas is not found existing at the given address not even the director of the firm could be found as none could tell about the name of the units and summons could not be served stands unrebutted. In the absence of the cogent evidence by the CB to prove the verification done at his end as required under Regulation 10(n), we have no reason to differ from the response of the Meerut Commissionerate about M/s Fine Overseas to be a non-existing exporter.

16. We further observe that there is the sufficient admission in statement of Shri Vijay B. Rane that CB had never visited exporter office/ factory located at Muradabad. CB was operating from Delhi as well as from Mumbai, there is nothing to produce on record to show the need as to why an exporter in Muradabad is exporting through Mumbai ports instead of Delhi ports which are much in proximity to the place called Muradabad. Absence of such reasoning is also sufficient for us to hold that the customs broker was consciously

involved in alleged fraudulent exports which otherwise has been admitted by his G-Card holder as observed above.

17. The Adjudicating authority while recording the extract of the statement of Shri Zoheb Moin has recorded that M/s Fine Overseas is a merchant exporter who purchased goods from various traders M/s Sai Enterprises, M/s Sai Traders and M/s SD Trading but the authority has ignored that the details of these traders have not at all been produced either by the exporter or the custom broker. Paragraph 25.2.5 of the order under challenge is silent to this effect. Once an exporting firm is alleged as fake/ non-existent and the CB is also alleged to have connived, the onus was of CB respondent to bring on record all requisite details to prove a valid chain of supplier, importer, CB and consignees abroad. Absence of such details on record supports our opinion to hold that the adjudicating authority has wrongly exonerated the CB from allegations of violating of Regulation 10(n). From the above discussion, we hereby accept all the grounds raised by the respondent/assessee in their cross-objection. We, accordingly, hold that the order under challenge, to that extent, is liable to be set aside.

18. At this stage comes the question of proportionality of punishment as to whether the revocation of customs broker licence will be proportionate punishment to the alleged violation by said CB of Regulation 10(n).

19. For the purpose it is foremost necessary to appreciate the role of custom broker. Hon'ble Supreme Court in the case of **K M**

**Ganatra.** Hon'ble High Court of Calcutta in the case of **Welcome Air Express Pvt Ltd. Vs. Commissioner of Customs. (Airport & Administration)[ 2022 (380) ELT 544 (Cal)** while considering the decision of Hon'ble Supreme Court in the case of Shri Kamashki Agency has hold as follows:

"19. Thus, any contravention of the obligations cast on the CHA even without intent would be sufficient to invite upon the CHA the punishments listed in the Regulations.

20. In Shri Kamakshi Agency the role of the CHA had been set out in the following terms:- The very purpose of granting a license to a person to act as Custom House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods at any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents, determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments etc.

Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as Custom House Agent, it is seen that while Custom House Agent should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of his access to the Department. The grant of licence to a person to act as Custom House Agent is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit conveyance or the import or export of the goods. In such circumstances, great

confidence is reposed in a Custom House Agent. Any misuse of such position by the Custom House Agent will have far reaching consequences in the transaction of business by the Custom House officials.

20. In the present case from the above discussion it has come on record that M/s Fine Overseas is a firm existing only on the papers which was created in the name of Shri Sirajul Kallu. The exporter was not existing at the address mentioned in the IEC. The IEC and bank accounts were obtained for facilitating the fraudulent exports to avail ineligible IGST refund / drawbacks. From the RBI remittances report regarding accepted realization of exports by M/s Fine Overseas during the relevant period it has come on record that remittance of Rs. 41,575 USD against one shipping bill was realized as against an amount of Rs. 2,10,14,836/- for 8 shipping bills. To our opinion and in light of the unretracted admission of respondents/ CB's G-card Holder about involvement of CB in this transaction we hold that this is a case of not merely the violation of Regulation 10(n) but a case of fraud committed by CB and fraud vitiates everything. The cardinal principal which is enshrined in section 17 of the Limitation Act is that fraud nullifies everything.

21. This Tribunal in the case of **M/s Swastic Cargo Agency Limited vs. Commissioner of custom 2023 (2) TM 677(Tribunal-Delhi)** has held that this being a case of facilitating the fraudulent exports carried out and it being duly proved during the enquiry proceedings that the exporter were non-existent. CB is rightly held to have failed to verify the correctness of the document

thereby violating its obligation as a customs broker even forfeiture of security deposit has rightly been ordered. In the light of the obligations conferred upon the CB by the Regulations CBLR, 2018 and the proven fraudulent act and conduct of CB on record, we hold that suspension of his licence is quite a proportionate penalty. The order under challenge is upheld to this extent. In the light of the entire above discussion, holding that there is no violation of Regulation 10(e) has been set aside but violation of Regulation 10(n) of CBLR, 2018 by the appellant has been confirmed with confirmation that CB licence, in given circumstances is proportionate penalty. Hence, the appeal stands party allowed and cross-objections stands allowed, consequently licence stands suspended.

(Order pronounced on **03/10/2023**)

**(DR. RACHNA GUPTA)**  
**MEMBER ( JUDICIAL )**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER ( TECHNICAL )**