

CESTAT NEW DELHI

M/S SADAGATI CLEARING SERVICES PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (AIRPORT & GENERAL) , NEW DELHI

Revocation of Customs Broker License - forfeiture of security deposit - penalty - risky exporters involved in IGST refund frauds - reliance placed on reports of the jurisdictional officer - violation of regulation 10 (n) of the Customs Broker Licensing Regulation 2018 - HELD THAT:- The entire allegation against the appellant is based on the two reports of the jurisdictional officer that the exporters were found to be non-existing at the registered premises and that the Input Tax Credit, ITC was not admissible to the exporters. The aforesaid two reports accept that the two exporters had obtained GST registration in July 2017 and had been filing the returns. It also mentions that they have fraudulently obtained ITC. For fault of the exporters, the appellant cannot be blamed unless there is evidence to establish that the appellant had colluded with the exporters but evidence has not been placed.

These two issues were examined at length by a Division Bench of the Tribunal in COMMISSIONER OF CUSTOMS, NEW DELHI (AIRPORT AND GENERAL) COMMISSIONERATE VERSUS M/S CRM LOGISTICS PRIVATE LIMITED (VICE-VERSA) [[2021 \(12\) TMI 253 - CESTAT NEW DELHI](#)] where it was held that The Customs Broker cannot be faulted for trusting the certificates issued by a government officer. It is a different matter if documents were not authentic and were either forged by the Customs Broker or the Customs Broker had reason to believe that the documents submitted to him were forged.

After referring to the various documents submitted by the appellant, the Tribunal held that it is not the responsibility of the customs broker to physically go and verify the existence of each exporter at every location, let alone keep track as to whether the exporters shifted their place of business. The Tribunal held that even if the exporter changed his address, action cannot be taken against the customs broker - The show cause notice has relied upon the two relied upon documents and the report of the officer is that the exporters had taken ineligible ITC, which even if correct cannot be a factor for revoking the customs broker license of the appellant. The customs broker is also not required to physically verify the addresses of the exporters.

Appeal allowed.

No.- Customs Appeal No. 50765 of 2021 With Customs Early Hearing Application No. 50193 of 2023

Order No.- FINAL ORDER NO. 50766/2023

Dated.- May 29, 2023

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT AND HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Shri Priyadarshi Manish & Shri Anmol Arya, Advocate for the Appellant

Shri Nagender Yadav, Authorized Representative of the Department

ORDER

JUSTICE DILIP GUPTA

M/s Sadagati Clearing Services Pvt. Ltd., the appellant has sought the quashing of the order dated 18.06.2021 passed by the Commissioner of Customs (Airport & General) by which the customs broker license issued to the appellant has been revoked. The order also forfeits the security deposit and imposes penalty on the appellant.

2. The appellant was granted the customs brokers license on 13.01.2016 which is valid upto 26.05.2025. The Directorate General Analytics and Risk Management, DGARM of the Central Board of Indirect Taxes and Customs analysed the data and identified risky exporters involved in IGST refund frauds. It found that 2,005 of exporters could not physically be found at the registered premises. It also found that the exporters were being handled by 62 customs brokers, including the appellant and this matter was reported to the respective Commissionerates.

3. This led to the issuance of a show cause notice dated 29.12.2010 to the appellant. The relevant portion of the show cause notice is reproduced below:-

2. Whereas, an official communication vide email dated 17.08.2020 (RUD-1) was received from the Joint Director, Directorate General of Analytics and Risk Management (DGARM), New Delhi which is a legal document under Section 4 of the Information Technology Act, 2000. The said communication was received in connection with identification of risky exporters involved in IGST refund frauds who could not be verified physically/are untraceable. Along with the said email communication a list of Customs Brokers who handled consignments for these untraceable exporters was also received.

3. Whereas, in connection with analysis being undertaken by the DGARM, New Delhi for identification of risky exporters involved in IGST refund frauds, feedback from field formations was analyzed by the DGARM to examine possible collusion of Customs Brokers with risky exporters in the execution of frauds. After analyzing the data for adversely reported cases of identified risky exporters including that of exporter who could not be verified physically (untraceable), it was revealed that certain Customs Brokers handled consignments for multiple untraceable exporters.

4. Whereas, as per the list provided by the DGARM the CB M/s Sadagati Clearing Services Pvt. Ltd. handled consignments for exporters having the following GSTIN who are untraceable:

6. Whereas, as a result of physical verification for identification of Risky Exporter by the field formations of the following exporters has been received in some cases which is elaborated as below:-

(i) M/s Ridhi Sidhi Traders (07AAVFR6825K1ZE):

Remarks of jurisdictional officer (RUD-2):

Exporter does not appear to be bonafide.

(ii) M/s Saturn Expotrade (07ADHFS9621F1ZW):

Remarks of jurisdictional officer (RUD-3):

Exporter does not appear to be bonafide.

7. From the above remarks/verification report, it appears that during verification/ identification of Risky Exporters, they have found non-existent and the CB has handled the export consignment of the above exporters, resulting there is a possible collusion and malfeasance by the CB with the said exporters to defraud the exchequer. It also appears that the CB has also not bothered to follow KYC guidelines as prescribed under Customs Brokers Licensing Regulations (CBLR), 2018. Therefore, the above said DGARM report recommends initiation of inquiry for violation of KYC guidelines under the Customs Brokers Licensing Regulations (CBLR), 2018.

18. Whereas the above CB has found to be contravening the provision of CBLR, 2018 for the reasons narrated in preceding paras, therefore, in order to establish the contravention of various Regulations of CBLR, 2018, an Inquiry/examination is essential. **Therefore, in terms of Regulation 17(1) of CBLR, 2018, Shri Ram Dass, AC, ACC Export, Delhi Customs is being appointed as an Inquiry officer in the above discussed case M/s Sadagati Clearing Services Pvt. Ltd., the authorized Customs Broker is required to join the proceedings before the Inquiry officer and to submit his representation, if any, to the inquiry officer within 30 days of the issuance of this Show Cause Notice.** The Inquiring authority shall submit a report within 90 days of the issuance of this Show Cause Notice to the Commissioner of Customs (Airport & General), New Custom House, New Delhi.

20. **Therefore, M/s Sadagati Clearing Services Pvt. Ltd., A-13, Okhla Industrial Area, Phase-I, New Delhi 110020, Authorized Customs Broker License No. R-05/DEL/CUS/2016 (PAN: AAVCS2245K) valid upto 26.05.2025 in terms of Regulation 17 of CBLR 2018 are hereby called upon to Show Cause to the Commissioner of Customs (Airport & General), New Custom House, New Delhi within thirty days of the receipt of the Inquiry Report, that in terms of the above paras and the Inquiry Report Why;**

a) they should not be held responsible for contravention of provisions of Regulation 10 (n) of Customs Broker Licensing Regulation;

b) their Customs Broker License No. R- 05/DEL/CUS/2016 (PAN: AAVCS2245K) valid upto 26.05.2025 should not be revoked and part or whole of the security submitted at the time of issue of their Registration, should not be forfeited in terms of Regulation 14 read with Regulation 17 of CBLR, 2018 (also read with Regulation 18 and Regulation 20 of erstwhile CBLR 2013).

c) penalty should not be imposed on them under the provisions of Regulation 18 of CBLR 2018 read with Regulation 17 of CBLR, 2018 (also read with Regulation 18 and Regulation 20 of erstwhile CBLR 2013).

4. The appellant participated in the proceedings before the enquiry officer who submitted a report and the relevant portion of the report is reproduced below:-

“ 25.4 I find that the CB during the Inquiry proceedings have not placed on record that they have exercised due diligence to ascertain the genuineness of the exporters and failed to justify the custom clearance of the said risky exporters under the CBLR, 2018. I also find from the sources that directors of the CB were also involved in the bogus export in the name of different dummy firms and controller in some cases for getting extra benefits and hence, in the instant cases knowingly had also not followed the Regulations of the CBLR, 2018.

Conclusion:

26. In view of the facts discussed above, I find that M/s Sadagati Clearing Services Pvt. Ltd., A-13, Okhla Industrial Area, Phase-I, New Delhi 110020, holder of CB License No. R- 05/DEL/CUS/2016 (PAN: AAVCS2245K) valid upto 26.05.2025, have failed to comply with the Regulation 10 (n) of CBLR, 2018 and are liable for penal action under Regulation read with Regulations 17 & 18 of CBLR, 2018, including revocation of license, forfeiture of security & imposition of penalty.”

5. A communication dated 13.03.2021 was thereafter sent to the appellant to place his version. The appellant filed a detailed reply, but the Commissioner by order dated 18.06.2021 revoked the customs broker licence of the appellant and the relevant portion of the order is reproduce below:-

26.3. In this context, the CB has submitted that they have complete and relevant document of KYC of the Clients. I find that Regulation 10(n) of CBLR-2018 clearly stipulates that the CB shall „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'. Further, even though, as per the investigation conducted by DGARM, all the 22 exporters tabulated above are doubtful and non-existent, yet at least in respect of one of the exporters, the Department has physically verified the address of the exporter and it was found non-existent. Accordingly, I find that violation of Regulation 10(n) stands established and the defense arguments do not hold good and from the above stated facts, it is evident that contravention of Regulation 10(n) of CBLR 2018 (erstwhile Regulation 11(n) of CBLR 2013) stands established. Accordingly, the CB license is liable to be revoked.

26.4 Further, I note under the mandate of the Regulation 10(n) of the CBLR 2018, a Customs broker is obligated to verify correctness of IEC, GSTIN, identity and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. Thus, I find that apart from documents to be obtained, there is also a provision for features to be verified by the CB, wherein in case of individuals, present and permanent address in full, complete and correct and in the case of a company name of company, principal place of Business, mailing address of the company and telephone, fax number, e-mail address are to be verified by the CB. However, as per report received from the DGARM, New Delhi, on physical verification all the 22 exporters were found non-existent and the CB has handled the

export consignment of the above exporters. Thus, it is evident on records that no such feature was verified by the CB in the instant case. **Therefore, I find that CB has not shown due diligence while verifying features and obtaining the documents as per KYC norms. If CB had done verification of present and permanent address in full, complete and correct and principal place of Business, which is to be verified by the CB, huge government revenue could have been saved.**

26.5 Thus, I find that the CB has failed to fulfil his obligation cast upon him in terms of provisions laid down under Regulation 10(n) of CBLR, 2018 read with the Circular 09/2010- Customs dated 08.04.2010.

(emphasis supplied)

6. Shri Priyadarshi Manish, learned counsel for the appellant submitted that all the documents as per the Circular dated 08.04.2010 were taken by the appellant from the respective exporters and, therefore there was no violation of regulation 10 (n) of the Customs Broker Licensing Regulation 2018, 2018 regulations. Learned counsel submitted that there is no requirement under regulation 10(n) that the customs broker should physically verify the addresses of the exporters/importers. In fact, a customs broker is only required to verify the correctness of the Importer Exporter Code (IEC) number, Goods and Service Tax Identification Number (GSTIN), identity of the client and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information which verification was done by the appellant in the present case.

7. Shri Nagender Yadav, learned authorized representative appearing for the Department however, supported the impugned order.

8. In order to appreciate the contentions, it would be appropriate to reproduce regulation 10(n) of the 2018 Regulations and it is as follows:-

“10. Obligation of Customs Broker. - A Customs Broker shall-

....

(n) verify correctness Importer Exporter Code (IEC) 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 and information;”

9. The show cause notice that was issued to the appellant relies upon three relied upon documents. The first is the email dated 17.08.2020 sent by the Joint Director, DGARN. The second and the third relied upon documents are in connection with the two exporters namely M/s Ridhi Sidhi Traders and M/s Saturn Expotrade and paragraph 6 of the show cause notice deals with these two exporters. The remarks of the jurisdictional officers have also mentioned in show cause notice regarding these two exporters and they are reproduced below:

“6. Whereas, as a result of physical verification for identification of Risky Exporter by the field formations of the following exporters has been received in some cases which is elaborated as below:-

(i) M/s Ridhi Sidhi Traders (07AAVFR6825K1ZE):

Remarks of jurisdictional officer (RUD-2):

Exporter does not appear to be bonafide.

(ii) M/s Saturn Expotrade (07ADHFS9621F1ZW):

Remarks of jurisdictional officer (RUD-3):

Exporter does not appear to be bonafide.”

10. In so far as M/s Ridhi Sidhi Traders (RUD is concerned), detailed remarks of the officer are as follows:-

“ On verification of the registered address of the firm given in the registration details, the assessee exporter was found non-existing at the given address.

2. A letter dated 06/02/2020 was written to the assessee for providing Annexure-A and relevant details for verification. However, the said letter was returned undelivered by Postal Authorities. An email dated 15.05.2020 was sent to assessee by this office to their registered email ID to provide Annexure-A along with relevant documents for verification. However, no response to the mail has been received in this office till date.

4. On perusal of documents downloaded from AIO system, it was found that assessee obtained GST registration in July, 2017. The assessee is under the supervision of the State Present registration status of assessee is "cancelled". GSTR-1, GSTR-3B and GSTR-2A returns of the assessee were obtained from AIO and analyzed.

4.1. The assessee has filed-GSTR-1M for the period from April, 2018 to March, 2019 only. Out of the returns filed, except for May, 2018, all other filed returns are nil returns.

4.4. In the above context, it appears that the assessee has availed major ITC only in the month of May, 2018. During the above period, assessee appears to have availed excess ITC amounting to Rs. 66,34,954/-. No GSTR-3B and GSTR-1M returns have been filed after June, 2019.

5. Further, no details are available on E-WAY Bill portal in respect of e-way bills received or generated by the assessee.

6. Further, the suppliers of the assessee as reflecting in their GSTR-2A have been verified with Peridot App On verification, it has been observed that there are 2 suppliers appearing in its GSTR-2 returns. Its suppliers namely M/s Sadagati Clearing Services Pvt. Ltd. (GSTIN-07AAVCS2245KIZT) and M/s Committed Logistics India Pvt. Ltd.(GSTIN-07AACCC4122CIZD) have not filed their GSTR-3B for the last 6 months; both have been blocked for EWB generation; and both last filed their GSTR-1 for Nov, 2019.

7. Since, the firm has been found to be non-existing on physical verification of their registered premises; letter dated 06.02.2020 has been returned undelivered by postal authorities; no reply has been received in this office against the email dated 15.05.2020 and in view of the facts elaborated above, the exporter-assessee does not appear to be bonafide.”

(emphasis supplied)

11. The relevant portion of the remarks of the officer in regard to the M/s Saturn Exportrade (RUD) are as follows –

On verification of the registered address of the firm given in the registration details, the assessee exporter was found non-existing at the given address.

2. A letter dated 06/02/2020 was written to the assessee for providing Annexure-A and relevant details for verification. However, the said letter was returned undelivered by Postal Authorities. An email dated 15.05.2020 was sent to assessee by this office to their registered email ID to provide Annexure-A along with relevant documents for verification. However, no response to the mail has been received in this office till date.

3. Analysis of GST Returns filed by the assessee has been done. The assessee has filed GSTR-1M for the period from July, 2017 to March, 2019 only. Out of these returns, transactions are reflecting only in GSTR-1M returns for March-Apr, 2018 and remaining filed returns are Nil returns.

4. As per GSTR-1M, the assessee has outward supplies only in the month of March, 2018 and April, 2018 that 100 exports having taxable value of Rs. 32, 27,38,412/- and involving IGST of Rs. 1,97,02,548/-. Further, the party has shown taxable supply to unregistered person in March, 2018 amounting to Rs. 1,20,74,509/-. No tax is shown as paid on such supplies. The assessee has filed GSTR-3B for the period from July, 2017 to June, 2019 only. All GSTR-3B Returns, except from the month of March-Apr, 2018 are Nil returns.

6. In the above context, **it appears that the assessee has availed excess ITC amounting to Rs. 64,58,030/- (primarily in GSTR-3B of Apr,2018). Further, the assessee appeared to have shown noticeable business transactions only in the month of March-Apr, 2018 as no significant transactions have been reported prior to and after that period. “**

(emphasis supplied)

12. The entire allegation against the appellant is based on the two reports of the jurisdictional officer that the exporters were found to be non-existing at the registered premises and that the Input Tax Credit, ITC was not admissible to the exporters. The aforesaid two reports accept that the two exporters had obtained GST registration in July 2017 and had been filing the returns. It also mentions that they have fraudulently obtained ITC. For fault of the exporters, the appellant cannot be blamed unless there is evidence to establish that the appellant had colluded with the exporters but evidence has not been placed.

13. These two issues were examined at length by a Division Bench of the Tribunal in **M/s CRM Logistics Private Limited Vs. Commissioner of Customs, New Delhi (Airport and General), Customs Appeal No. 50857 of 2021 decided on 13.12.2021** and the relevant portion of the decision is reproduced below:-

“ 17. As far as the admissibility of ITC is concerned, nothing in the CBLR, 2018, even remotely suggests that it is the responsibility of the Customs Broker to ensure its admissibility or that if inadmissible ITC is taken and thereafter a refund of it is claimed, the Customs Broker is responsible. As per the CGST/IGST/SGST Act, the assessee takes ITC and the officers can verify and if necessary, take appropriate action. The Customs Broker has no locus standi or power to verify the ITC taken. The Customs Broker is not an officer with the power to verify the ITC. Therefore, for any ITC wrongly taken by any assessee, the Customs Broker is in no way responsible. As far as the existence of the exporter at the registered premises is concerned, 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 responsibility does not extend to physically going to the premises of each of the exporters to ensure that they are functioning at the premises. When a Government officer issues a certificate or registration with an address to an exporter, it is not for the Customs Broker to sit in judgment over such a certificate. The Customs Broker cannot be faulted for trusting the certificates issued by a government officer. It is a different matter if documents were not authentic and were either forged by the Customs Broker or the Customs Broker had reason to believe that the documents submitted to him were forged. 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)

14. After referring to the various documents submitted by the appellant, the Tribunal held that it is not the responsibility of the customs broker to physically go and verify the existence of each exporter at every location, let alone keep track as to whether the exporters shifted their place of business. The Tribunal held that even if the exporter changed his address, action cannot be taken against the customs broker.

“ 21. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, by the time the jurisdictional GST officer who prepared the report (RUD-2) went for verification, situation may have changed. If so, it is a ground for starting a thorough investigation by the officer and is not a ground to suspend/cancel the licence of the Customs Broker who processed the exports. **It is not the responsibility of the Customs Broker to physically go to and verify the**

existence of each exporter in every location, let alone, keeping track if the exporter has moved from that address. In this case, there is no clarity whether the exporter was not available at the registered premises on the date of export or if he ceased to operate after the export. Even if the exporter has changed his address and failed to change his address in various documents issued by various authorities immediately, it cannot be held against the Customs Broker.”

15. The facts of the present case are similar to the facts of the aforesaid appeal that was decided by the Tribunal. The show cause notice has relied upon the two relied upon documents and the report of the officer is that the exporters had taken ineligible ITC, which even if correct cannot be a factor for revoking the customs broker license of the appellant. The customs broker is also not required to physically verify the addresses of the exporters.

16. Thus, for all the reasons stated above, it not possible to sustain the order dated 18.06.2021. It is, accordingly, set aside and the appeal is allowed. As the appeal has been heard, the application filed for early hearing of the appeal has been rendered infructuous and is accordingly disposed of.

(order dictated and pronounced in the open Court)