

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

PRINCIPAL BENCH, COURT NO. I

**CUSTOMS APPEAL NO. 51018 OF 2021**

[Arising out of the Order-in-Original No. 30/MK/Policy/2021 dated 15.04.2021 passed by Commissioner of Customs (Airport & General) New Delhi ]

**M/s Jiva Cargo Logistics**

E-126, Flat No. 4, Third floor,  
Vishwakarma Colony, Near General Store  
New Delhi 110044

**.....Appellant**

**Versus**

**Commissioner of Customs  
(Airport & General)**

New Custom House,  
Near IGI Airport  
New Delhi 110037

**....Respondent**

**APPEARANCE:**

Shri Gaurav Prakash Advocate for the appellant.  
Shri Rajesh Singh, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 58585 /2024**

**DATE OF HEARING : 04.09.2024**

**DATE OF DECISION: 13.09.2024**

**P.V. SUBBA RAO**

1. M/s. Jiva Cargo Logistics<sup>1</sup> filed this appeal to assail the order in original<sup>2</sup> dated 15.4.2021 passed by the Commissioner revoking its licence of the appellant under the Customs Brokers' Licensing Regulations, 2018<sup>3</sup>, forfeiting its security deposit and imposing penalty of Rs. 50,000/-.

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**1. Appellant  
2. Impugned order  
3. CBLR**

2. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records.

3. The issues which fall for consideration in this case are as follows:

“ (a) Did the appellant violate regulation 10 (n) of the Customs Brokers Licensing Regulations, 2018? and  
(b) If so, is the revocation of its Customs Broker’s licence, forfeiture of security deposit and imposition of penalty of Rs. 50,000/- proportionate to the violation?”

4. The facts which led to this case are that the Directorate General of Analytics and Risk Management<sup>4</sup> of the Central Board of Excise and Customs<sup>5</sup> analysed data, identified suspicious registrants under the Goods and Services Tax<sup>6</sup> and got a physical verification of some of these suspected registrants and found that they did not exist at all at the places of their business.

5. DGARM also found that some of these GST registrants also had obtained importer exporter codes<sup>7</sup> from the Directorate General of Foreign Trade<sup>8</sup> and actually exported goods. DGARM further identified which Customs Brokers had processed the exports of such exporters and conveyed the data to the concerned commissioners. Among the Customs Brokers so identified by the DGARM was the appellant.

6. Based on the information received from DGARM, the Commissioner (Airport & General) New Delhi, initially suspended the licence of the appellant on 25.8.2020 and gave a post-

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**4. DGARM**  
**5. CBIC**  
**6. GST**  
**7. IEC**  
**8. DGFT**

decisional hearing to the appellant on 7.9.2020 and thereafter, issued Show Cause Notice<sup>9</sup> dated 7.12.2020 and appointed an inquiry officer. The Inquiry officer submitted his report on 4.3.2021 a copy of which was supplied to the appellant and a personal hearing was held on 13.4.2021. Thereafter, the impugned order was passed on 15.4.2021.

### **Submissions on behalf of the appellant**

7. Learned counsel for the appellant made the following submissions:

- a) The alleged violation of Regulation 10(n) is not supported by facts.
- b) The report of DGARM alleged that some Customs Brokers including the appellant had handled exports of allegedly 'risky exporters'.
- c) Based on this letter, the appellant's licence was first suspended and then the suspension was confirmed and finally the SCN was issued and an inquiry officer was appointed. The report of the inquiry officer was sent to the appellant and the appellant made its submissions. Without considering the submissions made, the Commissioner passed the impugned order.
- d) The only allegation in the impugned order is that the appellant had not fulfilled its obligations under Regulation 10(n) of the CBLR. In support of this allegation, the evidence relied upon are the supposedly five verification reports (RUD I, II, III, IV and V).

- e) Out of the 34 allegedly suspicious exporters, verification was done only in respect of five viz., M/s. Retriovis Fashion (P) Ltd., M/s. Kashish Overseas, M/s. Laxmi Overseas, M/s.M D Impex and M/s. Aakar International. There is no assertion that any verification was made in respect of any other exporters.
- f) The appellant had verified the GSTIN from the GST website and IEC from the website of the DGFT.
- g) The appellant also obtained other documents viz., Voter ID Card, PAN Card, Aadhar Card of its clients and they were found to be in order. Thus, the appellant had fulfilled its obligation under Regulation 10(n) of verifying the identity of its clients and functioning of its clients at the addresses.
- h) The verification reports do not even say that the exporter had not existed at the time of export, let alone produce any evidence to support it.
- i) Therefore, the impugned order may be set aside and the appellant's Customs Brokers licence may be restored.

### **Submissions on behalf of the Revenue**

8. Learned authorised representative for the Revenue supports the impugned order and asserts that it calls for no interference.

### **Findings**

9. We have considered the submissions on both sides. DGARM did some analysis and came to the conclusion that several GST registrants did not exist and did not operate from their business addresses at all. It is undisputed that their

registrations were issued by the very department which initiated the investigation. **Thus, the irresistible conclusion is that if the DGARM is correct, then the department issued several *benami* (pseudonymous) GSTIN registrations to several entities which did not exist at all.**

10. These allegedly non-existent entities were also issued importer exporter codes (IEC) by the **DGFT. Thus, if the DGARM is correct, DGFT had issued *benami* IECs.**

11. As far as the appellant is concerned, there were thirty four exporters who, the DGARM suspected to be non-existent but verification was done only in respect of five. The verification reports were enclosed as RUD I, II, III, IV and V to the SCN.

12. The verification reports in respect of all five exporters were reproduced in paragraph 6 of the SCN as follows:

**“(i) M/s RETROVIS FASHION (P) LIMITED (07AAICR6589A1Z5):**

Remarks of jurisdiction officer: “On physical verification, the assessee was found non-existent. Further, letter dated 06.02.2020 written to the assessee to submit Annexure-A as per Circular No. 131/1/2020-GST dated 23.01.2020 but same was returned back undelivered by the postal authorities.

04 Suppliers namely SKM enterprises, M/s Satya Shanti Exporters, M/s Shiv Shakti Enterprises and M/s Ganpati Enterprises has been identified as risky supplier by DGARM.

Further, it has been observed that details of 04 vehicles claimed to have been used for transportation of inward goods, are not available on the 'Vahan.nic.in website which indicate that these vehicle nos. are either incomplete/incorrect or bogus and have been used merely to generate the e-way bills and the goods claimed to be transported through these vehicles involve

assessable value of Rs. 91,10,114/- and tax amount of Rs. 16,39,820/-

It is also gathered that investigation in r/o M/s Retrovis Fashion Pvt Limited is being carried on by the DGGI Delhi Zonal Unit.

In view of the above, the exporter-assessee does not appear to be bonafide"

**(ii) KASHISH OVERSEAS (07AAUFK1766H1ZV):**

**Remarks of jurisdictional officer:** "On physical verification, the said firm was found non-existent.

**(iii) LAXMI OVERSEAS (07AEMPT8024R1ZJ):**

**Remarks of jurisdictional officer:** As verified by the team and proposed by the Assistant Commissioner and on perusal of documents submitted, the exporter- assessee M/s Laxmi Overseas does not appear to be bonafide.

Also on verification of the registered address of the firm given in the registration details, the assessee exporter was not found existing at the given address

**(iv) M. D. IMPEX (07AFFPF2056KIZK):**

**Remarks of jurisdictional officer:** As per the inspection authorization dated 20.02.2020, Shri Shravan Kumar, Supdt and Sh. A.K Maurya, Inspector went to cause verification in respect of MD Impex, Plot No. B-62. JJ Colony, Sec 16A. Dwarka, Delhi-110078.

On reaching the said address no signboard was found and the premise was found occupied by the other tenant living with the family but no firm was found there. Enquiries about the said firm was conducted from the occupants and they said they have been living at the address since 3 years and they were totally unaware of MD Impex. The occupants and neighbours refused to give any written statement or sign any documents, therefore, panchnama could not be drawn.

In view of the above, M/s MD Impex is non-existent at the declared premises.

**(v) AAKAR INTERNATIONAL (07AFMPJ4749L2ZU):**

**Remarks of jurisdictional officer:** Non-existent. Assessee has filed the 3B I return from July 2017 to August 2019 only and no value has been shown in GSTR-I return which were filed for the period April 2019 to August 2019 only. 100% ITC is utilized for the payment of GST liability. For the E-way bill of inward supplies, these were ITC amounting of Rs. 5,16,124/- during the period after August 2019 for which no 3B return had been filed. Therefore detailed investigation is required as the exporter seems suspicious.”

13. Clearly, none of the five reports say that the exporters did not exist at the time of export. All that they say is that they did not exist when the officer verified. The remarks are that the exporters were non-existent and/or not bonafide.

14. It is not clear if the exporters existed before and had ceased to exist by the time of verification and when they ceased to exist. It is also not clear that if the entities never existed, why the jurisdictional officer had issued the GSTIN to such a benami firm in the first place.

15. Thus, even taking the reports at their face value, they do not show that the exporters never existed or had not existed at the time exports had taken place. There was no basis to draw such a conclusion, let alone, extrapolate it to conclude that the appellant had not fulfilled its obligations under Regulation 10(n).

16. We now proceed to examine the scope of the obligations of the Customs Broker under Regulation 10(n). It 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.

17. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC is issued by the Director General of Foreign Trade and the GSTIN is issued by the GST officers under the Central Board of Indirect Taxes and Customs of the Government of India or under the Governments of State or Union territory. The question which arises is has the Customs Broker to satisfy himself that these documents or their copies given by the client were indeed issued by the concerned government officers or does it mean that the Customs Broker has to ensure that the officers had correctly issued these documents. In our considered view, Regulation 10(n) does not place an obligation on the Customs Broker to oversee and ensure the correctness of actions by the Government officers. Such an interpretation would amount to saying that the Regulations under the Customs Act prevail over



the actions 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. Therefore, the verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as the Customs Broker 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 be issued by an officer is 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."

18. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers had correctly issued the certificate or registration. Of course, if the Customs Broker

comes to know that its client 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 this case, there is no doubt or evidence that the IEC, the GSTIN and other documents were issued by the officers. So, there is no violation as far as the documents are concerned.

19. 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. This identity can be established by independent, reliable, authentic:

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

20. Any of the three methods can be employed by the Customs Broker to establish the identity of his client. It is not necessary that it has to only collect information 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. Documents such as GSTIN, IEC and PAN card issued etc., certainly qualify as such documents 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 the factual matrix of this case, we are fully satisfied that the appellant has fulfilled this part of the obligation under Regulation 10(n).

21. 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 it is 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. Customs formations are 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. The 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 the factual matrix of this case, 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.

22. 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 paragraph, 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.

23. We, therefore, find that the Customs Broker did not fail in discharging its responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the appellant had violated Regulation 10(n) because the exporters were found to not exist during subsequent verification by the officers.

24. In view of the above, the appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on **13/09/2024.**)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(P.V. SUBBA RAO)  
MEMBER (TECHNICAL)**

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