

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

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 53964 OF 2023

[Arising out of the Order-in-Original No. 70/ZR/POLICY/2022 dated 19/12/2022 passed by Commissioner of Customs (Airport & General), New Delhi.]

M/s Goodwings Maritime Pvt. Ltd.Appellant
H. No. 265, Flat No. FF-1, First Floor,
Kh. No. 1151/3, Ward No. 2, Mehrauli,
Near Bhuiya Chowk,
New Delhi – 110 030.

Versus

Commissioner of Customs,Respondent
(Airport & General),
New Customs House, Near IGI Airport,
New Delhi – 110 037.

APPEARANCE:

Shri B.L. Yadav, Consultant for the appellant.
Shri Girijesh Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58607/2024

DATE OF HEARING : 05.06.2024
DATE OF DECISION: 23.09.2024

P.V. SUBBA RAO

M/s Goodwings Maritime Pvt. Ltd.¹ filed this appeal to
assail the order-in-original dated 19.12.2022² passed by the
Commissioner of Customs (Airport & General), New Delhi
whereby he revoked the customs broker licence of the

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- 1. the appellant**
 - 2. impugned order**

appellant, forfeited its security deposit and imposed penalty of Rs. 50,000/-. This order was passed in pursuance of the show cause notice³ dated 24.06.2022 issued by the Commissioner, wherein it was alleged that the appellant had contravened Regulations 10(a), 10(b), 10(d), 10(e), 10(f) and 10(k) of the Customs Broker Licencing Regulations, 2018⁴. The Commissioner appointed an Inquiry officer in the matter and after considering his report and the submissions made by the appellant passed the impugned order holding that the appellant had violated the provisions of Regulations 10(a), 10(d), 10(e), 10(f), 10(k) and 10(n) of the CBLR. He held that the appellant had not violated Regulation 10(b). For these violations, the Commissioner revoked the licence of the appellant, forfeited its security deposit and imposed penalty of Rs. 50,000/-.

2. The facts which led to the issue of the show cause notice are that one, M/s JCS Botanicals, Greater Kailash, New Delhi⁵ filed bill of entry dated 04.02.2022 at ICD, Jhattipur, Panipat to import goods declared as the following :-

S. No.	Item Description	Quantity	Value (Rs.)
1.	DRIED ROOT CROCUS (CORCUS SATIVUS L)	10000.00 Kgs.	1149032.81
2.	GULGAFIZ (GENTIANA OLIVIERI GRISEB)	2720.00 Kgs.	520894.88
3.	SALAB (DACTYLORHIZA HATAGIREA)	240.00 Kgs.	55153.58
4.	SHIKAKAL (PASTINACA SATIVA LINN)	10000.00 Kgs.	1149032.81

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- 3. SCN**
4. CBLR
5. the importer

3. The bill of entry was filed with M/s Prakhar Gupta as the Customs Broker. The consignment was examined and samples were sent to the Plant Quarantine and to the Wildlife Crime Control Bureau. Based on their reports, it was concluded that the imported goods were prohibited and could not have been imported at all. Investigation further showed that although the name of M/s Prakhar Gupta is indicated in the bill of entry as the Customs Broker, the actual processing of the bill of entry and the import consignment was done by the appellant using the Customs Broker's licence of M/s Prakhar Gupta.

4. Accordingly, action was taken against the importer, M/s Prakhar Gupta and the appellant under the Customs Act and the Joint Commissioner of Customs, Preventive Commissionerate passed order-in-original dated 28.03.2022, inter-alia, imposing a fine of Rs. 1,00,000/- on Shri Awadhendra Kumar, Director of the appellant and on Shri Prakhar Gupta each under Section 114AA of the Customs Act, 1962.

5. A copy of this order of the Joint Commissioner was sent to the Commissioner of Customs (Airport & General), who is the authority to issue licences to customs brokers in Delhi. Considering this order as the offence report, the appellant's CBLR licence was initially suspended by letter dated 26.04.2022 and the suspension was confirmed by order dated 18.05.2022. Thereafter, SCN dated 24.06.2022 was issued to

the appellant and the Inquiry officer submitted his report on 21.09.2022. After considering the Inquiry report and the submissions by the appellant, the impugned order was passed by the Commissioner.

6. The grounds on which this appeal is filed by the appellant are as follows :-

(i) The impugned order is illegal, baseless and unsustainable.

(ii) M/s Prakhar Gupta was the Customs Broker in the import and, therefore, the appellant had no obligation to fulfill the provisions of CBLR in respect of this consignment.

(iii) In the following case laws revocation of the Customs Broker licence was set aside as it affects the livelihood of the Directors, Partners, Employees and staff of the firm.

(a) **M/s Perfect Cargo & Logistics** versus **Commissioner**⁶

(b) **Joshi & Sons** versus **Commissioner**⁷

(c) **International Cargo Services** versus **CC, Ahmedabad**⁸

(iv) Customs Broker licence should not be revoked even if there are minor lapses or omissions.

6. 2022 (4) TMI 1005 – CESTAT NEW DELHI

7. 1998 (5) TMI 237 – CEGAT, MUMBAI

8. 2022 (5) TMI 764 – CESTAT AHMEDABAD

- (v) The Commissioner had not considered the plea of the appellant regarding the effect of the action of revocation on his right to carry on trade or provision.
- (vi) Revocation of Customs Broker's licence is a harsh action not commensurate with the offence.
- (vii) The impugned order was passed based on order-in-original which was passed without issuing the show cause notice and without grant of personal hearing to the appellant or its Director.
- (viii) The statement of Shri Prakhar Gupta, a co-accused, is not reliable.
- (ix) Shri Prakhar Gupta was not made a party by the Commissioner in this case.
- (x) The statement by Shri Prakhar Gupta needs to be corroborated with independent documentary evidence
- (xi) The whole case is based on retracted statement, although the retraction was delayed.
- (xii) The importer in this case is in existence, presented himself for examination, cooperated with the investigation and paid all Government dues including redemption fine and penalty and re-exported the goods. Therefore there was no loss of revenue. Revocation of Customs Broker licence in such a case is unwarranted.

(xiii) There may be procedural infractions or violations of the regulations, but there is no allegation of malafide intention on the part of the appellant.

(xiv) The Joint Commissioner, who had passed the order-in-original which formed the offence report in this case failed to recognize that Shri Prakhar Gupta was the real Customs Broker.

(xv) When the importer is in existence and the documents received from him were submitted to the Customs, it cannot be said that there is violation of Regulation 10 (n).

(xvi) There is no violation of CBLR in Shri Awadhendra Kumar, Director of the appellant firm filing the bill of entry using the licence of Shri Prakhar Gupta.

(xvii) The Customs Broker's employees, such as, F Card, G Card and H Card holders are different from the Customs Broker and any mistake by its employees cannot be held against the Customs Broker.

(xviii) The impugned order may, therefore, be revoked. Their appeal may be allowed.

7. Learned authorized representative for the Revenue made the following submissions :-

(i) The import consignment was attempted to be cleared by filing the bill of entry using the CB licence of M/s Prakhar Gupta and investigations showed that the Bill

of Entry was filed the appellant through its Director Shri Awadhendra Kumar.

(ii) Examination of the goods was also done in the presence of G card holder of the appellant. Therefore, the appellant had clearly violated Regulations 10(a) of CBLR, which requires the Customs Broker to obtain an authorization from the importer or exporter. The imported goods were prohibited goods and were, therefore, confiscated under Section 111(d) and 111(o). As Customs Broker, the appellant was required to advise its client to comply with the provisions of the Act, other allied Acts and Rules and Regulations and in case of non-compliance, bring this fact to the notice of the Deputy Commissioner/ Assistant Commissioner of Customs. The appellant failed to do so and thereby violated Regulations 10(d) and 10(e) of CBLR.

(iii) The Customs Broker is mandated under Regulation 10(f) of CBLR to inform its clients about various Rules and Regulations in respect of clearance of goods through the customs and in this case, the appellant had failed to do so. Thus, the appellant had violated Regulation 10(f) of CBLR.

(iv) Shri Archit Sharma, Proprietor of the importer clearly stated that he had sent all details and documents of the consignment by E-mail to accounts@goodmaritime.com of the appellant on the

directions of Shri Awadhendra Kumar, who is the Director of the appellant firm. Shri Awadhendra Kumar also said that he had collected original documents from the importer who filed the bill of entry for clearance who failed to submit the original documents. The appellant had violated Regulation 10(k).

(v) Thus, the appellant had violated Regulations 10(a), 10(d), 10(e), 10(f) and 10(k). The impugned order was, therefore, fair and proper and also no interference is required and the appeal may be dismissed.

8. We have considered the submissions on both sides and perused the records.

9. We need to decide the following questions :-

(a) Did the appellant violate Regulations 10(a), 10(d), 10(e), 10(f) and 10(k) of CBLR.

(b) If so, is the revocation of licence, forfeiture of security deposit and penalty of Rs. 50,000/- proportionate to the violations.

10. The facts are not in dispute. Prohibited goods were imported by the importer. They were described correctly. Even if the importer was not aware of the import restrictions, the customs broker is expected to be aware of the restrictions and prohibitions and advise the importer. If the importer still does not follow the law, it is the responsibility of the Customs Broker to bring this fact to the notice of the Assistant

Commissioner/Deputy Commissioner of Customs. In this case, the bill of entry was filed to clear prohibited goods by the Customs Broker.

11. An additional twist in this matter is that while the bill of entry was filed using the Customs Broker's credentials of M/s Prakhar Gupta, the actual Customs Broker who had filed the bill of entry was the appellant M/s Godwings Maritime Pvt. Ltd. Any Customs Broker is at least expected to know that he cannot file a bill of entry using the name of another as the Customs Broker just as an advocate cannot argue a case in a court of law representing himself to be another advocate.

12. The Customs Broker is a very responsible position and it is expected to be truthful and upright in his dealings. One of the grounds of appeal of the appellant is that it was not the Customs Broker at all and, therefore, it had no responsibility, to fulfill any of the obligations of the Customs Broker qua the bill of entry. It is its case that Shri Prakhar Gupta was the customs broker who had to fulfill the obligations and the appellant had nothing to do with the import and had no responsibility whatsoever.

13. However, it is also admitted in ground (z) of this appeal itself that Shri Awadhendra Kumar, the Director of the appellant firm had filed the bill of entry using the licence of M/s Prakhar Gupta.

14. It is further mentioned in ground (k) that any action taken by any employee of the Customs Broker – F card, G card or H card holder does not make the Customs Broker and therefore the action by its Director in filing the Bill of Entry does not make the appellant liable.

15. It is also further submitted that revocation of licence affects the livelihood of the Director and employees of the customs Broker and should be applied only in rarest the rare cases and not for minor lapses and revocation of licence affects the right of the appellant under Article 19 (1) (g) of the Constitution as it can no longer carry on its trade or profession.

16. Another submission advanced on behalf of the appellant is that the offence report which formed the basis of the SCN was passed without granting personal hearing to the appellant or its Director and yet penalty was imposed and is therefore the offence report is non-est. Therefore, the SCN and the impugned order must also be set aside. It is further submitted that Shri Prakhar Gupta was not made a party to these proceedings by the Commissioner.

17. We have considered these submissions. The short question to be answered is if the appellant had acted as the Customs Broker with respect to the bill of entry and instead of using its own licence used the licence of M/s Prakhar Gupta and filed the bill of entry. From the submission of the appellant

in this appeal itself, it is evident that Shri Awadhendra Kumar, director of the appellant had filed the bill of entry using the Customs Broker licence of M/s Prakhar Gupta. This fact having been admitted, need not be proved. It is also a matter of record that all documents were sent by the importer to the appellant's E-mail ID and the importer had not contacted Shri Prakhar Gupta. Shri Prakhar Gupta also confirmed that he had allowed the appellant to use his licence to file bill of entry although he denied allowing them to use his licence in respect of this bill of entry. It needs to be pointed out that bills of entry are filed online through the Customs EDI system. Therefore, it is impossible for anyone to file a bill of entry using the credentials of a Customs Broker unless the Customs Broker lends its credentials to such a person. In this case, admittedly Shri Prakhar Gupta had lent his credentials to the appellant. Shri Awadhendra Kumar, Director of the appellant used those credentials to file this Bill of entry. The importer only contacted the appellant and not Shri Prakhar Gupta and sent the relevant documents to the appellant. Admittedly, the appellant filed the bill of entry using the credentials of Shri Prakhar Gupta.

18. Shri Prakhar Gupta clearly erred in subletting his licence to the appellant. However, the appellant also violated the conditions of CBLR and instead of obtaining an authorization to file the bill of entry from the importer in its own name and then filing the bill of entry using its own credentials it filed the bill of entry using the credentials of Prakhar Gupta. Through

this Bill of Entry, the appellant attempted to clear prohibited goods. The appellant should not have filed the bill of entry but instead should have brought such imports to the notice of Assistant Commissioner or Deputy Commissioner. Instead, the appellant found a way out and filed the bill of entry in the name of Prakhar Gupta. Now the appellant argues that since it used the name of Prakhar Gupta, it is absolved of all the responsibility and Prakhar Gupta is the Customs Broker on record who alone is liable to fulfill all obligations. Thus, the appellant is trying to profit from its own wrong. It is like a boy who murdered both his parents and sought mercy on the ground that he was an orphan. In the peculiar facts of this case, we find that the appellant was, indeed, the Customs Broker in this case although it avoided being exposed by illegally using the credentials of another Customs Broker.

19. Another contention of the appellant is that revocation of licence takes away the livelihood of the Customs Broker and its employees and, therefore, such harsh action should not be taken. However, we find such harsh action is required in appropriate cases and the regulations provide for it. In this case, the intentions of the appellant are clear. It has its own Customs Broker licence but instead of using its licence, it used the licence of another Customs Broker and filed a bill of entry so as to facilitate clearance of prohibited goods. It is not a case of innocent violation or minor infraction. Its clear a case of facilitation of import of prohibited goods. To cover it up, the

appellant used the identity of another Customs Broker illegally for the purpose.

20. It is also submitted that the appellant should not suffer and is not responsible for any action taken by its directors and employees. We disagree. A Customs Broker is always responsible for the action of its employees and Directors. Otherwise, there is hardly any case where the Customs Broker – especially if it is a company – directly comes to the Customs House and files bills of entry. Its employees do so. It is also not the case here that Shri Awadhendra Kumar and Shri Sanjay Kumar of the appellant firm were operating privately independent of the appellant firm. All documents were made E-mailed to the appellant's E-mail ID. Using these documents, the bill of entry was filed and Shri Sanjay Kumar an employee of the appellant attended during examination of the goods. We have no doubt that both of them acted as employees of the appellant. Therefore, the appellant cannot escape the responsibility.

21. We now proceed to examine each of the alleged violations. **Regulation 10 (a)** requires the Customs Broker to obtain an authorization from each of the companies, firms or individuals by whom he is employed as Customs Broker and produce such authorization when required by the Deputy Commissioner or Assistant Commissioner of the Customs. In this case, the appellant had not obtained any authorization at

all from the importer and yet filed the bill of entry and used the credentials of another Customs Broker M/s Prakhar Gupta to file the bill of entry. We, therefore, have no hesitation in upholding the decision in impugned order that the appellant had violated Regulation 10 (a).

22. **Regulation 10 (d)** requires the Customs Broker to advise his client to comply with the provisions of the Customs Act, other allied Acts and Rules and Regulations thereof and in case of non-compliance bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Evidently, the goods which were imported by M/s JCS Botanicals were prohibited for import. It was the responsibility of the appellant to have advised his client accordingly and in case the goods were imported in violation of the prohibition, it was its responsibility to inform the Deputy Commissioner or Assistant Commissioner of Customs. Instead of advising its client or intimating the Assistant Commissioner about the import prohibited goods, the appellant filed the bill of entry in an attempt to clear them. In order to conceal this fact it used the credentials of another Customs Broker M/s Prakhar Gupta. We have no manner of doubt that the appellant violated Regulation 10 (d).

23. **Regulation 10 (e)** requires the Customs Broker to exercise due diligence to ascertain the correctness of any information which he imparts to a client with respect to any

work related to clearance of cargo or package. In this case, the appellant did not impart correct information to its client nor did it disclose its own name as the Customs Broker in the bill of entry. Therefore, appellant has clearly violated Regulation 10 (e).

24. **Regulation 10 (f)** requires the Customs Broker to not withhold information contained in any order, instruction or public notice relating to parents of cargo or package issued by Customs authorities, as the case may be from a client who is entitled to such information. There is nothing on record to show that the appellant had informed the importer about the prohibitions on the import of the goods as per the Plant Quarantine Laws. Therefore, we find that the allegation of violation of Regulation 10 (f) needs to sustain.

25. **Regulation 10 (k)** requires the Customs Broker to maintain up-to-date records, such as, bill of entry, shipping bill, trans-shipment application etc. All correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner. In this case, the importer stated that he had sent the documents/details of the consignment by E-mail to accounts@goodwingsmeritime.com of the appellant on the direction of its Director Shri Awadhendra Kumar and that Shri Awadhendra Yadav collected the original documents, but he failed to submit the original documents even when the

customs authorities asked for them. Thus, we find that the allegation of violation of Regulation 10 (k) of CBLR needs to be sustained.

26. The last question to be answered is the proportionality of the punishment to the violations. We find that this is not a case of lapse of the appellant due to carelessness or oversight. A Customs Broker is naturally expected to file the bills of entry in its own name just as an advocate is expected to file a vakalatnama in his own name in any court of law. It is impossible for any Customs Broker to use somebody else's credentials by mistake. In fact, it is an admitted fact even in the grounds of appeal before us that the Director of the appellant firm Shri Awadhendra Kumar, despite having its own Customs Broker licence, filed the bill of entry using the credentials of Shri Prakhar Gupta in connivance with Shri Prakhar Gupta. Shri Prakhar Gupta sublet his licence to the appellant who used the licence to file the bill of entry. The reason for this scheme is obvious. The imported goods were prohibited and the bill of entry filed using the credentials of another Customs Broker and in the appeal before us the submission of the appellant is that it is absolved of all responsibility because it used the credentials of another Customs Broker. It is not in dispute that all activities from bill of entry to obtaining the documents by E-mail and also physically and further participating in the examination of the goods is done by the appellant itself.

27. In this factual matrix, we find no room for any leniency being shown to the appellant. We do not find any reason to interfere with the impugned order.

28. In view of the above, the impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 23/09/2024.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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