

2022 (11) TMI 935 - CESTAT NEW DELHI**M/S BRIGHT CLEARING & CARRIER PVT. LIMITED AND M/S STAR CARRIERS VERSUS
COMMISSIONER OF CUSTOMS, (AIRPORT AND GENERAL) , NEW DELHI**

Revocation of Customs Broker License - forfeiture of security deposit - levy of penalty for violation of Regulation 10(n) of CBLR 2018 - verification of correctness of Importer Exporter Code (IEC) number and Goods and Services Tax Identification Number (GSTIN) - verification of identity of client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

HELD THAT:- On a query from the bench as to how the Customs Broker can be faulted when he relied on the IEC, GST Registration and several documents issued by the Government and if the exporters did not exist at all at the premises how these documents were issued by several Government officer - The officers are not mandated to ensure that the exporter(s) existed and were functioning from these premises but the Customs Broker is so mandated by Regulation 10(n) of the CBLR, 2018 which obligation does not get obliterated or diluted by the fact that officers of various departments have issued the documents.

On examination of order in the case of Millenium Express Cargo it is found that, that was a case where the cigarettes were smuggled concealed in a consignment of induction cookers and the Bill of Entry was filed by the CHA whose licence was then revoked for violation of Regulations 13(e) and 13(o) of CHA licensing Regulations, 2004. Of these, 13(o) is pari materia with CBLR 10(n) under consideration in this case. In the case of Millenium express cargo, the CHA has not even ever claimed that it had verified the existence of the importer at the given address - Millenium express Cargo does not support the case of the Revenue since there is nothing on record to show that the exporters did not exist at the premises at the time of export or that the appellants were aware about the non-existence of the exporters when they filed the Shipping Bills. In fact, there is not even an assertion by the Revenue that on the day the Shipping Bills were filed the exporters did not exist at the premises.

Documents issued by various Government officers - HELD THAT:- It is common knowledge that in designing schemes for issuing registrations, certificates or providing incentives, two conflicting objectives of due diligence and facilitation are balanced. Too many checks can make life difficult for the exporter or the citizen and too much facilitation can open the doors for frauds. Determining the 'golden mean' and where to draw the line is a matter of public policy. The extent of liberalization or tightening may also vary greatly from one system to another and that is also a matter of public policy. The entire system of exports is based heavily on trust and facilitation and very less emphasis on due diligence which enhances trade facilitation but also makes it vulnerable to misuse by fraudsters - the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in these appeals is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer.

Two verification reports in respect of this appellant state that the exporter is "not bonafide". The third verification is self contradictory inasmuch as it, on the one hand, states that the exporter does not exist at the place and on the other hand confirms that physical copies of PAN and IEC were provided during verification. It is not clear who has provided these documents if the exporter did not exist at that premises. The reports nowhere state that the exporters never functioned from those premises and the GSTIN were issued by the department to non-existent firms or they ceased to function from those premises after the GSTIN were issued - In fact, it is not even clear what the officers meant that the exporters are not bonafide. If the officers report that some exporters are not bonafide, it does not establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n). The entire case of the Revenue based on which the impugned order was passed was these verification reports which nowhere establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n).

The evidence available on record in the form of verification reports relied upon in the SCNs are vague and in some cases, even the name of the exporter who they were enquiring about is not indicated in them - the impugned orders revoking the Customs Brokers licences of the appellants forfeiting their security deposits and further imposing penalty on the appellants cannot be sustained and need to be set aside - Appeal allowed.

No.- CUSTOMS APPEAL NO. 51658 OF 2021 with CUSTOMS APPEAL NO. 51665 OF 2021

Order No.- FINAL ORDER NO. 51083-51084/2022

Dated.- November 18, 2022

Citations:

1. [Commissioner of Customs Versus M/s K.M. Ganatra & Co. - 2016 \(2\) TMI 478 - Supreme Court](#)
2. [Commissioner Of Customs Versus Shiva Khurana - 2019 \(1\) TMI 838 - DELHI HIGH COURT](#)
3. [Kunal Travels \(Cargo\) Versus Commissioner Of Customs \(Import & General\) New Customs House, IGI Airport, New Delhi - 2017 \(3\) TMI 1494 - DELHI HIGH COURT](#)
4. [JASJEET SINGH MARWAHA Versus UNION OF INDIA & ORS. - 2009 \(2\) TMI 57 - DELHI HIGH COURT](#)
5. [M/s. Sky Sea Services Versus Commissioner of Customs \(General\),, Mumbai - 2022 \(5\) TMI 1050 - CESTAT MUMBAI](#)
6. [M/s Perfect Cargo and Logistics Versus Commissioner of Customs \(Airport & General\) - 2020 \(12\) TMI 649 - CESTAT NEW DELHI](#)
7. [M/s Millenium Express Cargo Pvt. Ltd. Versus CC, New Delhi - 2016 \(3\) TMI 254 - CESTAT NEW DELHI](#)
8. [BARASKAR BROTHERS Versus COMMR. OF CUS. \(GENERAL\),, MUMBAI - 2009 \(7\) TMI 951 - CESTAT, MUMBAI](#)

MR. DILIP GUPTA, PRESIDENT AND MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Shri L B Yadav, Consultant - for the Appellant

Shri Rakesh Kumar, Authorised Representative for the Department

ORDER

We have heard Shri L B Yadav, learned consultant for the appellants, Shri Nagendra Yadav and Shri Rakesh Kumar, learned authorised representatives for the Revenue and perused the records. Both these appeals are on identical issues and hence they are being disposed of together.

2. The appellants are Customs Brokers [CB] whose licences were revoked by the impugned orders under of Customs Brokers Licensing Regulations [CBLR], 2018 and the security deposits made by them were forfeited. Penalty was also imposed on them on the ground that they had violated Regulation 10(n) of CBLR 2018.

3. The factual matrix leading up to the issue of the impugned orders is that the Directorate General of Analytics and Risk Management [DGARM] of the Central Board of Indirect Taxes and Customs [CBIC] analysed the data and identified risky exporters involved in execution of frauds and got verification done by the jurisdictional GST officers and identified exporters who could not be found at all physically at their registered premises. DGARM also found that exports by these exporters were handled by certain Customs Brokers including the appellants herein and reported them to the respective Commissionerates including the Respondent herein. The Respondent issued Show Cause Notices [SCN] to the appellants and appointed Inquiry officers. After considering the replies to the SCNs and the inquiry reports, the Commissioner passed impugned orders holding that the appellants had violated Regulation 10(n) of the CBLR. This Regulation reads as follows:

10. Obligations of Customs Broker.-A Customs Broker shall-

...

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

4. Since both cases involve deciding the scope of Regulation 10(n) and the extent of responsibility of the Customs Broker under it, we proceed to examine this issue before dealing with the specifics of each case. According to the learned consultant for the appellants, this responsibility is fulfilled if the Customs broker obtains at least two KYC documents and it is not the responsibility of the Customs Broker to physically inspect the premises of each of its clients to ensure that it is operating from that address. He submits that it is far too onerous for the Customs Broker to fulfil such a responsibility. He relies on the following decisions:

- a) **Kunal Travels versus CC(I&G), IGI Airport, New Delhi [2017(354) ELT 447(Del)]**
- b) **Commissioner of Customs versus Shiva Khurana [2019 (367)ELT 550 (Del)]**
- c) **Perfect Cargo Logistics versus CC (Airport &General), New Delhi [2021(376) ELT (Tri-Del)]**

5. According to the learned authorised representatives for the Revenue, the Customs Broker is an agent of the Custom House and has to ensure that the interests of the importer/exporter as well as the Revenue are protected. It is not sufficient for the Customs broker to merely obtain two KYC documents. The Regulation also requires the Customs Broker to verify identity of his client and functioning of his client at the declared address. If the Customs Broker does not fulfill this responsibility, it will invite action under the CBLR, 2018. They rely on the following decisions:

- a) **Commissioner of Customs versus K M Ganatra &Co [2016(332) ELT 15(SC)]**
- b) **Baraskar Brothers versus Commissioner of Customs (General) Mumbai [2009(244) ELT 562(Tri-Mumbai)]**
- c) **Sky Sea Services versus Commissioner of Customs (General) Mumbai [2022(5) TMI 1050- CESTAT Mumbai]**
- d) **Jasjeet Singh Marwah versus Union Of India and others [2009(2)TMI 57-Delhi High Court]**

6. We have considered the submissions on both sides. 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 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

7. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade [DGFT] and the GSTIN is issued by the GST officers under the CBIC or by officers of the Government of India or under the Governments of State or Union territory. The question which arises is whether the Customs broker is required to satisfy itself that these documents or their copies given by the client were, indeed issued by the concerned government officers OR is the Customs Broker also required to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) of CBLR cannot be read to mean the latter as it would imply treating the Customs Broker as one who is competent and responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that actions by the Customs Broker under the CBLR prevail over the actions by officers 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). In our view this is not a correct construction of the legal provision. Therefore, verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it 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 have been issued by an officer was

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.

8. **The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have issued the certificate or registration correctly. 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).** Of course, if the Customs Broker comes to know that its client had 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 these cases, there is no doubt or evidence that the IEC and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned.

9. 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. As per the Regulation, this identity can be established by independent, reliable, authentic:

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

10. Any of the three methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that it has to only conduct a physical verification 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. If a document is issued by any other person not interested in the relationship of the client and the Customs Broker, it would be independent. But it should also be reliable and authentic and not one issued by any Tom, Dick and Harry. Documents such as PAN card issued by the Income tax, driving licence issued by the RTO, Election voter card issued by the Election Commission, the passport issued by the Passport Officer, etc., certainly qualify as independent 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 these cases, we are fully satisfied that the appellants have fulfilled this part of the obligation under Regulation 10(n).

11. 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 they are 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. By their nature, Customs formations are located 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. For instance, if an importer from a small town in, say, Madhya Pradesh imports goods through ICD Tughlakabad in Delhi, the Customs Broker operating in Delhi cannot be expected to leave his entire business and travel to that town to verify physically if the importer, indeed, is functioning from that address. If Regulation 10(n) is interpreted to burden the Customs Broker with such a responsibility, it will not only be far too onerous to the Customs Broker but it will also make it impossible for anyone in the country to import/export unless he/she can find a Customs Broker willing to travel to his/her town for physical verification. This Regulation cannot be read so as to cause such harassment to the Customs Brokers and to the importers/exporters. This 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 these cases, 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.

12. We further note that 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 paragraphs, 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. Of course, if the Customs Broker was aware that the client has moved and continues to file documents with the wrong address, it is a different matter.

13. In these appeals, the negative reports were issued by the jurisdictional GST officers who, or whose predecessors or colleagues, must have issued the GST registration. Thereafter, if it is found that the exporter was not operating from that address at all and the GST registration was wrongly issued, the responsibility rests on the officers who issued the GST Registration and not the Customs Broker. This wisdom in hindsight of the officers that the GSTIN was wrongly issued at that address cannot be held against the Customs Broker.

14. The appellants relied on the GST Registration Certificates and if relying on them is an offence, issuing them when the firms didn't even exist must, logically be a much graver offence and the officers who issued them must be more serious offenders. There is nothing in the reports of the jurisdictional officers which were the Relied Upon Documents in the SCN to indicate as to why and how the GST registration was issued when the exporters did not exist at all. We also find that other documents were procured by the appellant which were also issued by various other authorities which have not been alleged to be, let alone, proven to be fake or forged by the Revenue. Evidently, they also must have been issued by concerned officers just as GST Registration was issued by the jurisdictional officers.

15. Unless all these officers of various organisations (including the jurisdictional GST officer who issued the registration in December 2018) either acted fraudulently or carelessly, the above could not have been issued.

16. It is possible that all the authorities who issued the above documents had issued them correctly and thereafter, by efflux of time, when the GST officers went for verification, the situation changed. If so, it is a ground for starting a thorough investigation by the officer and is not a ground to revoke the licence of the Customs Broker who processed the exports. We also find that there is nothing in the SCNs to prove that the exporters did not exist or operate from the addresses when the Shipping Bills were filed.

17. On a query from the bench as to how the Customs Broker can be faulted when he relied on the IEC, GST Registration and several documents issued by the Government and if the exporters did not exist at all at the premises how these documents were issued by several Government officers, learned Departmental Representatives submitted that officers issue these documents as per their mandate which does not include physical verification of the business premises. They further clarified that in almost all these cases, the Registrations were issued based on online applications. The officers are not mandated to ensure that the exporter(s) existed and were functioning from these premises but the Customs Broker is so mandated by Regulation 10(n) of the CBLR, 2018 which obligation does not get obliterated or diluted by the fact that officers of various departments have issued the documents.

18. Learned Authorized Representatives further submit that the case of Kunal Travels [2017 (3) TMI 1494- Delhi High Court] cannot come to the aid of the appellant as that was issued in the context of the erstwhile Custom House Agents Licensing Regulations, 2004 which, as it stood during the relevant time, did not have an obligation on the Custom House Agent similar to the one in Regulation 10(n) of CBLR 2018. A provision similar to Regulation 10(n) of CBLR, 2018 was later introduced as Regulation 13(o) of CHA Licensing Regulations, 2004 which was considered in the case of Millenium Express Cargo [2017 (346) ELT 471 (Tri- Del)] by this Tribunal which decision was upheld by the High Court of Delhi. The ratio of this order should apply to this case.

19. We have examined the order in the case of Millenium Express Cargo and find that, that was a case where the cigarettes were smuggled concealed in a consignment of induction cookers and the Bill of Entry was filed by the CHA whose licence was then revoked for violation of Regulations 13(e) and 13(o) of CHA licensing Regulations, 2004. Of these, 13(o) is pari materia with CBLR 10(n) under consideration in this case. In the case of Millenium express cargo, **the CHA has not even ever claimed that it had verified the existence of the importer at the given address.** Paragraph 5 of this order is reproduced below:

5. We have considered the contentions of both sides. It is an admitted fact that the appellant had dealt with the importer M/s. Nikhaar Associates. It is also a fact that the importer was found to be non-existent. CHA Regulation 13(e) state that "a CHA shall 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". In the present case, there was no question of the appellant being in a position to impart any information to the client as the same was found non-existent. Also the weight of the container for which it filed bill of entry was in excess by 7.280 tonnes over the declared weight (5.051 tonnes) which should have come to the appellant's notice had due diligence been exercised. Thus the allegation of violation of Regulation 13(e) is sustainable. Further Regulation 13(o) ibid states as under : "A Custom House Agent shall verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."

C.B.E. & C. vide Customs Circular No. 9/2008, dated 8-2-2010 in order to avoid any ambiguity inter alia laid down the following requirements of verification and documents for the "individual" category to which the importer belonged being a proprietorship concern as claimed.

S. No.	Form of organisation	Features to be verified	Documents to be obtained

1.	Individual	(i) Legal name and any other names used (ii) Present and Permanent address, in full, complete and correct	(i) Passport (ii) PAN Card (iii) Voter's identity card (iv) Driving licence (v) Bank account statement (vi) Ration card Note : Any two of the documents listed above, which provides client/ customer information to the satisfaction of the CHA will suffice.
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Thus the appellant was required to inter alia verify present and permanent address in full, complete and correct which the appellant did not do. Merely because the appellant obtained documents as per Column 4 of the above table does not tantamount to fulfilment of requirement of Column 3 relating to features to be verified because if that was so, then there was no need to have Column 3. As seen from Regulation 13(o) quoted above, the Customs House Agent is obligated to inter alia verify antecedent, correctness of Importer Exporter Code, identity of the importer and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The appellant has not even claimed that it had ever verified the existence of the importer at the given address. Obviously, the appellant failed to fulfil the requirement of Regulation 13(o) *ibid*.

20. **Millenium express Cargo** does not support the case of the Revenue since there is nothing on record to show that the exporters did not exist at the premises at the time of export or that the appellants were aware about the non-existence of the exporters when they filed the Shipping Bills. In fact, there is not even an assertion by the Revenue that on the day the Shipping Bills were filed the exporters did not exist at the premises.

21. As far as the documents issued by various Government officers are concerned the submission of the learned departmental representatives is interesting and needs a deeper examination. It is their submission that the documents were neither issued fraudulently nor issued carelessly but were issued within the mandate of the officers who issued them and this mandate does not include physical verification. In other words, the submission is that the system designed by the Government for issue of these certificates itself is such that they can be issued even to persons who do not exist at all at the declared premises. We proceed to examine this proposition and if it supports case of the Revenue in these appeals.

22. It is common knowledge that in designing schemes for issuing registrations, certificates or providing incentives, two conflicting objectives of due diligence and facilitation are balanced. Too many checks can make life difficult for the exporter or the citizen and too much facilitation can open the doors for frauds. Determining the 'golden mean' and where to draw the line is a matter of public policy. The extent of liberalization or tightening may also vary greatly from one system to another and that is also a matter of public policy. The entire system of exports is based heavily on trust and facilitation and very less emphasis on due diligence which enhances trade facilitation but also makes it vulnerable to misuse by fraudsters. The IEC is issued by DGFT based only on an online application and a few easy to obtain documents. Similarly, as per the submission of the learned authorized representatives for the Revenue, GSTIN is also issued without any verification at all and through an automated process. So, one cannot rule out the possibility of an IEC and/or GSTIN being issued without the person even operating its business from the address. The IEC forms the foundation for the entire system of controls over imports and exports and, in turn, is the basis for issue of various licences and scrips by the DGFT and is also the basis for Customs allowing exports. As the risk management system [RMS] of the Customs Electronic Data Interchange permits majority of the exports without either assessing the documents or examining the records, there is a very high probability of any fraudster successfully exporting the goods (or even empty containers) and claiming the export incentives and profiting from it.

23. However, **the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs**

Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in these appeals is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer.

24. Learned Authorized representatives for the Revenue relied on the decision of a coordinate bench of this Tribunal in Baraskar Brothers that there is an obligation on the Customs Broker to conduct a physical verification. Firstly, there is nothing in the Regulation 10(n) about physical verification. It requires verification that the person is operating from that address and this verification can be done through independent, reliable, authentic, documents, data or information. Secondly, this decision of the coordinate bench in Baraskar brothers is contrary to the decision of the jurisdictional Delhi High Court in Kunal Travels which is binding on us.

25. We now proceed to examine details of these cases:

Appeal C/51658/2021- Bright clearing & Carrier Pvt. Ltd.

26. Show cause notice dated 23.12.2020 alleged that the appellant processed exports in respect of 31 non-existent exporters but verification was done only in respect of the following 3 exporters which form the basis of the entire case:

(i) M/s Nipun Enterprises (07ABJGPG4747J1ZF)- RUD-2: The report of the jurisdictional officer does not indicate the name of the exporter but indicates in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO and against S.No. 2 "Rental/owned" – Rented. Against the column titled "Recommendation about the bonafides of the entity verified: "Non-existent exporter. NOC denied" and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Non-existent exporter".

(ii) M/s Sunrise Impex (07AHNPN6921F1Z5)- RUD-3: The report of the jurisdictional officer does not indicate the name of the exporter but indicates in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO. Against the column titled "Recommendation about the bonafides of the entity verified: "Non-existent. Not recommended" and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Not recommended as non-existent".

(iii) M/s P K Exim (07GTGPK5284M1ZZ)- RUD-4: The report of the jurisdictional officer indicates the name of the exporter and in the first table against S.No. 1 "Found to be existing (Yes/No)" – NO. Against the column titled "Recommendation about the bonafides of the entity verified: "M/s. P K Exim was found non-existent at their registered address. M/s. PK Exim got GST registration on " and in the Recommendation about the bonafides of the entity verified, the jurisdictional Commissioner wrote "Non-existent firm. ITC not admissible".

27. Inquiry Report dated 26.3.2021 found that the appellant has violated provisions of Regulation 10(n) of CBLR

28. Impugned order dated 18.6.2021 held that the appellant has taken necessary documents as per the KYC as per CBLR 2018 but failed to verify the actual functioning of the exporter concerned and has not satisfied the inquiry officer that they had made all possible efforts to verify the genuineness of the exporter. The appellant has been held to have violated Regulation 10(n) of CBLR 2018 and hence his licence was revoked under Regulations 14&18 read with Regulation 17(7) of CBLR 2018 and his security deposit of Rs. 5,00,000/- was forfeited and a penalty of Rs. 50,000/- was imposed on the appellant.

29. It appears from the verification reports that in two cases, the officers enquired not by giving the names of the exporters but enquired if an exporter with a particular GSTIN existed in that address. People and businesses are remembered by their names and not by their GSTIN or PAN or Voter ID Card number. If anyone goes to an area and enquires, for instance, if a person with a particular PAN lives hardly anyone would confirm. Interestingly, the reports also indicate that the premises were rented while at the same time indicating that the exporter was non-existent. It is not clear who, according to the reports had rented the premises if the exporter did not exist at all.

30. The report in respect of Nipun Enterprises states NOC (No objection Certificate) denied. The report in respect of Sunrise Impex indicates 'Not recommended' and the report in respect of P K Exim states ITC (input tax credit under GST) not admissible. There is also nothing in the CBLR requiring the Customs Broker to seek, let alone, obtain any NOC from any officer to process exports of any exporter. Similarly, nothing in the CBLR requires any recommendation from any officer for a

Customs Broker to process exports. Similarly, the admissibility of ITC under GST is to be examined by the jurisdictional officers and the Customs Broker has neither any power nor any duty to decide if the ITC is admissible. Thus, none of these three RUDs make out any case to show that the Customs Broker had not fulfilled its obligation under Regulation 10(n) of CBLR 2018.

31. Even if it is presumed that the officers had conducted the enquiry properly indicating the names of the exporters and found that the exporters had not existed on the day of verification, it is not clear if the exporters never operated from that premises and the GSTIN and the IEC were wrongly issued by the officers without verification or they shifted or closed after the GSTIN or IEC were issued. If so, it is not clear if the exporter had existed or not on the day the appellant obtained the KYC documents and processed the exports.

Appeal C/51665/2021- Star Carriers

32. Show cause notice dated 28.12.2020 alleged that the appellant processed exports in respect of 18 non-existent exporters but verification was done only in respect of the following 3 exporters:

(i) M/s Isha International (07AAHF15290D1ZF)- RUD-2: Remarks of the jurisdictional officer is 'Verification report of the issue has been submitted by the concerned team with a conclusion of non bonafide. This has been found correct and further endorsed by the supervisory AC. The Joint Commissioner has also affirmed the report. Thus, the non-bonafide is verified'.

(ii) M/s Prakash Industries (07AAWFP7599M1ZU)- RUD-3: Remarks of the jurisdictional officer is 'As verified by the team and proposed by the Assistant Commissioner and on perusal of documents submitted, the exporter-assessee M/s. Prakash Industries (GSTIN 07AAWFP7599M1ZU) does not appear to be bonafide'.

(iii) M/s Kavya Impex (07AIMPL4955B1Z7)- RUD-4: This report indicates that the exporter was not found to exist at the premises but further specifies the total value of exports within 9 months and older than 9 months and also gives details of remittances received. It further gives the details of the bank account of the exporter and month wise transactions for a few months. It also confirms that physical copy of the PAN and IEC were provided.

33. Inquiry Report dated 26.3.2021 held that the appellant has violated provisions of Regulation 10(n) of CBLR, 2018

34. Impugned order dated 22.6.2021 revoked the licence, directed the licence to be surrendered immediately along with all F, G &H cards issued, forfeited security deposit of Rs. 50,000 and imposed penalty of Rs. 50,000/-.

35. Two verification reports in respect of this appellant state that the exporter is "not bonafide". The third verification is self contradictory inasmuch as it, on the one hand, states that the exporter does not exist at the place and on the other hand confirms that physical copies of PAN and IEC were provided during verification. It is not clear who has provided these documents if the exporter did not exist at that premises. The reports nowhere state that the exporters never functioned from those premises and the GSTIN were issued by the department to non-existent firms or they ceased to function from those premises after the GSTIN were issued. So far as the reports of the officers that the exporters were 'not bonafide' is concerned, nothing in Regulation 10(n) of the CBLR, 2018 requires the Customs Broker to obtain a certificate from any officer that the exporter is bonafide. In fact, it is not even clear what the officers meant that the exporters are not bonafide. If the officers report that some exporters are not bonafide, it does not establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n). The entire case of the Revenue based on which the impugned order was passed was these verification reports which nowhere establish that the Customs Broker had not fulfilled its obligations under Regulation 10(n).

36. In view of the above, we find that:

a) In both these cases, the evidence available on record in the form of verification reports relied upon in the SCNs are vague and in some cases, even the name of the exporter who they were enquiring about is not indicated in them.

b) The reports state either that the exporters are not bonafide or that the officer does not recommend or that the ITC was not available.

c) Obtaining a report from the officers that the exporter is bonafide or obtaining their recommendation or checking if the exporter is entitled to ITC under GST is NOT the responsibility of the Customs Broker under any Regulation of CBLR, 2018.

d) While the reports indicated that the exporters did not exist at the premises on the date of verification, they do not indicate if they never existed and the GSTIN was issued by the Commissionerate and the IEC and PAN, etc. were issued by DGFT and Income tax department respectively to non-existing entities or the exporters ceased to operate from those premises after the GSTIN, IEC, etc. were issued. In case of latter, it is not clear if the exporters operated from those premises at the time the appellants had processed their exports.

37. In view of the above, the impugned orders revoking the Customs Brokers licences of the appellants forfeiting their security deposits and further imposing penalty on the appellants cannot be sustained and need to be set aside.

38. The impugned orders are set aside and the appeals are allowed with consequential relief to the appellants.

(Order pronounced in open court on 18/11/2022.)