

2022 (4) TMI 1005 - CESTAT NEW DELHI

**M/S PERFECT CARGO & LOGISTICS VERSUS COMMISSIONER OF CUSTOMS,
NEW DELHI (AIRPORT AND GENERAL)**

Revocation of Customs Broker License - forfeiture of security deposit - levy of penalty - risky exporters involved in IGST refund frauds, whose exports were processed by the appellant as the Customs Broker - contravention of provisions of Regulation 10(n) of Customs Broker Licensing Regulation

- HELD THAT:- In this case, there are no details in the SCN or in the inquiry report or in the impugned order as to how the DGARM came to the conclusion that the exporters did not exist and how after considering the defence submissions, the Commissioner came to a conclusion that the appellant had violated Regulation 10(n) of CBLR, 2018. This case has been made and the licence has been revoked not only taking the alleged communication from DGARM as conclusive proof that the exporters did not exist but also inferring from it that the appellant has not conducted the verification as per Regulation 10(n) of CBLR, 2018. The SCN did not even supply a copy of the communication from the DGARM to the appellant, let alone the details of its inquiries which led to the conclusion that the exporters did not exist. The entire case, therefore, is not built on conclusive evidence.

The Commissioner found it proper to deprive the appellant and its employees of their livelihood in such a casual and callous manner. The impugned order cannot be sustained and needs to be set aside.

The respondent shall restore the Customs Broker licence of the appellant within 10 days of receiving a copy of this order - Appeal allowed - decided in favor of appellant.

No.- CUSTOMS APPEAL NO. 50875 OF 2021

Order No.- FINAL ORDER NO. 50347/2022

Dated.- April 20, 2022

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

Shri Shubham Tyagi with Ms. Vartika Kashyap, Advocates - for the Appellant

Shri Nagendra Yadav, Authorised Representative for the Department

ORDER

We have heard learned counsel for the appellant and learned authorised representative for the Revenue and examined the records of the case.

2. This appeal has been filed assailing Order in Original dated 23-06-2021 passed by the Commissioner [**Impugned order**]. M/s. Perfect Cargo and Logistics [**Appellant**], is licensed as Customs Broker under Customs Broker Licensing Regulation, 2018

[CBLR] whose licence was revoked by the impugned order and a penalty of ₹ 50,000/- has been imposed on it. The operative part of the impugned order is as follows:

“In exercise of powers conferred in terms of Regulation 14 & 18 read with Regulation 17(7) of CBLR, 2018 (Erstwhile Regulation 18 & 22 read with Regulation 20(7) of CBLR, 2013).

(i) I hereby revoke the Customs Broker License No. R-62/DEL/CUS/2017 valid upto 07.11.2027 of M/s Perfect Cargo and Logistics;

(ii) I order for forfeiture of the whole amount of security deposit of ₹ 5,00,000/- (Rupees Five Lakhs only) furnished by them;

(iii) I impose penalty of ₹ 50,000/- on M/s Perfect Cargo and Logistics.”

3. The facts which lead up to the issue of the impugned order are that the Directorate General of Analytics and Risk Management [DGARM] of the Central Board of Indirect taxes and Customs analysed the data, identified risky exporters involved in IGST refund frauds and got some feedback from the field formations and found that some exporters could not be verified physically (were untraceable) and sent an official communication by email dated 17.8.2020 to the Commissioner. Of these exporters there were about 24 exporters whose exports were processed by the appellant as the Customs Broker. The Commissioner issued a Show Cause Notice [SCN] dated 28.12.2020 to the appellant calling upon it to explain as to 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-62/DEL/CUS/2017 valid upto 07.11.2027 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 (read with Regulation 18 and 20 of erstwhile CBLR 2013);

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

4. An Inquiry officer was appointed who submitted his Inquiry Report dated 26.3.2021 based on the following “undisputed facts”:

i) The Customs Broker has handled various shipping bills of twenty four exporters mentioned in the Table under para 5 of the inquiry report who have claimed IGST refunds.

ii) These exporters, as per information received from DGARM, are non-existent.

5. The inquiry officer stated in his report that “he has no hesitation to hold that violation of Regulation 10(n) has been established.” He recommended that the Commissioner may revoke the licence of the appellant and impose penalty.

6. The Commissioner then passed the impugned order in which he held **‘since such a large number of the exporters are untraceable, it appears that the CB has failed to comply with the obligations cast upon it under Regulation 10(n) of the CBLR 2018’** and revoked its licence, and imposed a penalty of ₹ 50,000/- upon it. There is no allegation of any other violation by the appellant Customs Broker in the impugned order.

7. Learned counsel for the appellant submits that not only has the appellant fulfilled the requirement under Regulation 10(n) of CBLR, 2018 by obtaining all the required documents from the exporters in terms of CBEC’s Circular No. 9/2010-Customs dated 8.4.2010 but it also submitted them to the Commissioner during the adjudication proceedings.

8. The short question which falls for our consideration in this case is given the evidence adduced in the SCN and the evidence produced by the appellant in defence, has a case been established by the Revenue that the appellant had violated Regulation 10(n) of CBLR, 2018 and if so, whether the revocation of licence and imposition of penalty by the impugned order can be sustained.

9. We have examined the SCN assisted by learned counsel for the appellant and learned authorised representative of the department. The sole basis on which the SCN was issued was that DGARM had sent a communication to the Commissioner that some of the exporters whose documents were processed by the appellant did not exist. There are no relied upon documents in the SCN nor is there any list of documents attached to the SCN. Learned counsel for the appellant submits that no documents whatsoever were given to them along with the SCN to substantiate the allegations in it. No documents were also produced before us by the Revenue to support the allegation in the show cause notice. The irresistible conclusion is that the SCN was issued only based on a communication from DGARM without any documents or evidence whatsoever to substantiate them. Even the letter/communication of DGARM on the basis of which the SCN was issued was also not enclosed with the SCN. It was also not produced before us. Both sides agree that there were no relied upon documents to the SCN.

10. The report of the Inquiry officer is based on two facts- firstly, that the appellant filed Shipping Bills on behalf of the 24 exporters which the appellant is not disputing and secondly, the report from the DGARM says that the exporters do not exist. Since DGARM sent an email stating that the exporters did not exist, the inquiry officer concluded the appellant must have violated Regulation 10(n) and must not have carried out the necessary verification. The finding in the impugned order that the appellant has violated Regulation 10 (n) of CBLR 2018, is also based on nothing but a communication which the Commissioner is said to have received from DGARM. Neither the communication nor the enquiries which lead the DGARM to send it have been shared with the appellant or produced before us. Regulation 10(n) 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;

11. According to the appellant, it had conducted the verification as required. According to the Revenue, it must have failed to conduct the verification because the exporters in whose name the exports were made did not exist. This conclusion that the exporters did not exist is based on a communication said to have been received from DGARM, which both the inquiry officer and the Commissioner took as conclusive proof not only of the fact that the exporters did not exist but also, by implication, conclusive proof that the appellant had not conducted the verification as required under Regulation 10(n). The questions which arise are:

a) How did the DGARM come to the conclusion that the exporters did not exist?

b) Has any physical verification been conducted? If so, by who?

c) What was the report of the officer who conducted the enquiry?

d) Did the exporter not exist when the physical verification was conducted or did he not exist on the date exports were made?

e) If the exporters did not exist, how were the importer Exporter Code, PAN, GST Registration Number, etc. issued by the various authorities? Did they collude with the exporter to issue these certificates?

f) Can the appellant be faulted for trusting the certificates issued by various Government authorities?

g) Or were the documents forged and not actually issued by the authorities? If so, how did the Customs EDI system accept such fake numbers?

h) If there was any fraud or forgery in the documents, was the appellant involved in it or had the appellant simply accepted the documents in good faith?

i) Has the officer who conducted the verification been examined and cross examined to determine if the exporters existed or not at the time of the export?

j) If the exporter did not exist physically at the address, was he operating from some other address? If so, when did he move?

k) Given the documents and evidence which the Revenue has collected and the documents presented by the appellant in defence, has a case been made out that the appellant has not fulfilled its obligations under Regulation 10(n)?

12. In this case, there are no details in the SCN or in the inquiry report or in the impugned order as to how the DGARM came to the conclusion that the exporters did not exist and how after considering the defence submissions, the Commissioner came to a conclusion that the appellant had violated Regulation 10(n) of CBLR, 2018. This case has been made and the licence has been revoked not only taking the alleged communication from DGARM as conclusive proof that the exporters did not exist but also inferring from it that the appellant has not conducted the verification as per Regulation 10(n) of CBLR, 2018. The SCN did not even supply a copy of the communication from the DGARM to the appellant, let alone the details of its inquiries which led to the conclusion that the exporters did not exist. The entire case, therefore, is not built on conclusive evidence.

13. We are surprised that the Commissioner found it proper to deprive the appellant and its employees of their livelihood in such a casual and callous manner. The impugned order cannot be sustained and needs to be set aside.

14. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant. The respondent shall restore the Customs Broker licence of the appellant within 10 days of receiving a copy of this order. Registry shall serve a copy of this order on the respondent.

(Pronounced in Court on 20.04.2022)