

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

PRINCIPAL BENCH,
COURT NO. III

CUSTOMS APPEAL NO. 52311 OF 2022

[Arising out of the Order-in-Original No. 02/CHA/2022 dated 07/11/2022
passed by Commissioner of Customs (Prev.), Jodhpur, Jaipur.]

M/s Global Forwarders Inc.,

...Appellant

Cabin No. 2, Second Floor, Khasra No. 10/10,
Near Karan Dharam Kanta, Samalkha,
New Delhi – 110 037.

Versus

**The Commissioner of Customs (Prev.),
Customs Commissionerate Jodhpur,**

...Respondent

Hqrs. at NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

APPEARANCE:

Shri Arun Goyal, Advocate for the appellant.

Shri Nagendra Yadav, authorized representative for the
Department

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50353/2023

DATE OF HEARING : 08.02.2023

DATE OF DECISION: 21.03.2023

P.V. SUBBA RAO

M/s Global Forwarders Inc.¹, New Delhi filed this appeal on
01 December, 2022 to assail the order-in-original² dated
07.11.2022 passed by the Commissioner of Customs
(Preventive), Jodhpur, Headquarters at Jaipur, which was

¹ appellant

² impugned order

received by the appellant on the same date by e-mail. The Commissioner had, by the impugned order, confirmed the suspension of the customs broker licence of the appellant under Customs Broker Licensing Regulation, 2018.

2. The appellant is licenced as Customs Broker by the Commissioner of Customs (Preventive), Jodhpur and was entitled to operate throughout the country. It filed a shipping bill dated 26.06.2021 on behalf of M/s ZED A International, Inc. at Air Cargo (Export), New Delhi. The consignment was examined by the officers of Customs, statement of the appellant was recorded, market survey was conducted and on 14.09.2022, and a show cause notice³ was issued by Joint Commissioner, Customs, Air Cargo (Export), New Delhi to the exporter and also to the appellant proposing action under various provisions of the Customs Act, 1962. A copy of this SCN was also sent to the Commissioner of Customs (Preventive), Jodhpur which was received by him on 03.10.2022. After examining the SCN, the Commissioner of Customs, Jodhpur issued an order on 14.10.2022 suspending the customs broker licence of the appellant recording, inter-alia, "therefore, considering the gravity of the case, it is felt that immediate action is warranted to prevent misuse of Customs Broker Licence No. 01/CHALR/2004 of M/s Global Forwarders Inc., which warrants urgent action". On 07.11.2022, after considering the defence put-forth by the appellant against the suspension, the impugned order was

³ SCN

passed confirming the suspension. Aggrieved, the appellant filed this appeal.

3. Learned Counsel for the appellant submitted as follows :-

- (i) "The alleged cause of action for which Customs Broker Licence has been suspended is for date 26.06.2021 and the licence has been suspended on 14.10.2022. In terms of Regulation 16 of CBLR, 2018 citing immediate action is necessary. No immediate cause has been cited/made out and the licence was suspended after more than 15 months. No urgency for such preventive measures is mentioned in the entire order. No case made out that any inaction immediately shall jeopardize the customs duties and security of cargo. The act of suspension is preventive and not punitive.
- (ii) The appellant was allowed to conduct business and function at all places, including the place of alleged cause of action for this intermittent 15 months, wherein the appellant had filed more than 1000 clearances documents. Nothing adverse has been pointed out thereafter.
- (iii) Even the Commissioner of Customs, New Delhi where the alleged offence had taken place did not feel it appropriate to take any action of Prohibition under Regulation 15 of CBLR, 2018, during this entire period.
- (iv) He even did not deem it fit to report the alleged offence immediately to the Commissioner of Customs who issued licence for any immediate action.
- (v) The order dated 07.11.2022 is also bad in law, as the Commissioner of Customs has given his finding in the matter leaving no scope of any fair and impartial enquiry.
- (vi) The impugned order deserves to be set aside on this ground and the Customs Broker licences of the appellant needs to be restored by revoking the Suspension order and order for confirmation of suspension post hearing.

ON MERITS

- (vii) It is alleged that the appellant as Customs Broker has contravened the Regulation 10 (d), 10 (e) and 10 (n) of CBLR, 2018 for the reasons that the appellant stated that he did not verify the antecedents of the exporter by visit to his premises and also that there was difference in declared value of the export goods and value arrived at by Market survey.

- (viii) The provisions of 10 (d) and 10 (e) have been invoked for the reasons that the appellant failed to ascertain the correct value of the export consignments. The value declared was proposed to be reduced consequent to market enquiry by the Customs.
- (ix) The provisions of Regulation 10 (n) are invoked for the failure of the appellant to verify the antecedents and he admittedly did not visit the premises of the exporter to verify the KYC documents.
- (x) The issue regarding correct valuation is not in domain of the CB, is now a settled proposition of law as well as also that the CB is not supposed to verify KYC documents by visiting the premises of the client. None of the KYC documents were found forged. The exporter was found registered with GST and also confirmed by GST authorities. The export was under Free Shipping Bill and as such no revenue loss or any benefit could accrue to the exporter in inflating the value".

4. Learned authorized representative for the Revenue vehemently supports the impugned order. It is his submission that there was no delay whatsoever in issuing the order of suspension because while there was some suspicion and an enquiry had begun on 26.06.2021, after the investigations were concluded a SCN was issued by the Air Cargo, New Delhi only on 14.09.2022. Admittedly, this SCN was received by the Commissioner, Jodhpur only on 03.10.2022 and the suspension order was issued soon after on 14.10.2022. He further submits that after hearing the appellant's defence, the Commissioner passed the impugned order confirmed the suspension on 07.11.2022.

5. On a specific query from the Bench, learned Counsel for the appellant submits that after confirmation of the suspension further action was taken by the Commissioner and SCN dated 29.11.2022 was issued to the appellant proposing revocation of

licence. The appellant had submitted its reply on 26.12.2022 and the enquiry officer submitted his report on 02.01.2023. The order of the Commissioner regarding the revocation is yet to be issued.

6. We have considered the submissions from both sides and perused the records.

7. The appellant's first contention is that there was undue delay in issuing the impugned order considering that the alleged irregularity took place on 26.06.2021 and the suspension order was issued only on 14.10.2022. It means that no immediate action was found to have been warranted and the appellant was operating freely during the intervening period. We find that the customs broker is licenced by one Commissioner, but he is allowed to operate at all other locations in the country also. In the normal course of business of exports several cases of doubt and suspicion arise on a daily basis throughout the country. In our considered view, simply because a suspicion has arisen in a particular case it is not a sufficient ground to suspend the licence of the customs broker who handled such imports/exports. Only after necessary enquiry, and investigation if a prima facie case is found against the customs broker can its licence be suspended. In this case, the Commissioner, Air Cargo, New Delhi completed the investigation and issued a SCN on 14.09.2022 and it was received by the Commissioner, Jodhpur giving him sufficient grounds to examine if suspension of the licence was warranted. The licence was suspended soon after by order dated

14.10.2022. The post decisional hearing was given and the suspension was confirmed by the impugned order dated 07.11.2022. We, therefore, find no delay at all on the part of the Commissioner, Jodhpur or any error in issuing the suspension order or in issuing the order confirming the suspension.

8. Another argument of the learned counsel of the appellant was that in the impugned order, the Commissioner had given his findings that the appellant had violated various provisions of the Customs Broker Licensing Regulations, which was not warranted. It is his submission that a decision on these can only be taken at the time of final decision of revocation of licence or otherwise. Therefore, the entire exercise of appointing enquiry officer and subsequent orders will get vitiated because the Commissioner has pre-decided the issues.

9. We have gone through the order of the Commissioner. After suspension of the licence, the Commissioner afforded an opportunity to the appellant to present his defence. The appellant presented his defence not only asserted that there was no need for an immediate action and, therefore, the suspension was not warranted, but submitted as defence five grounds on merits as follows:-

- (i) There is no evidence on record to establish contravention of Regulation 10 (n) of CBLR, 2018 ;
- (ii) There was no legal requirement to physically verify the address of the exporter ;
- (iii) There is no evidence of violation of Regulations 10 (d) and 10 (e) of CBLR, 2018 ;

- (iv) Obtaining business through a trusted inter-mediatory is not an offence under CBLR, 2018 ;
- (v) Statement of the Customs Broker recorded by the Investigating Officer was non-inculpatory and, therefore, no action could have been taken.

10. We do not find that the appellant confined his submission to the immediate need to suspend the licence. It is in this context that Commissioner examined the above submissions of the appellant and gave his findings. When the appellant itself has made submissions on merits as defence, the Commissioner was bound to examine those and give his findings on them. Therefore, we find no force in the submission of the learned counsel for the appellant that the Commissioner has pre-decided the issues. We do find that the Commissioner came to the conclusion that immediate action was necessary while suspending the licence on 14.10.2022 and promptly took subsequent steps for confirmation of the suspension. We also find that after the impugned order, the Commissioner issued SCN dated 29.11.2022 proposing revocation of the licence. The appellant had, within a month, submitted its reply to the SCN dated 29.11.2022 on 26.12.2022. The enquiry officer submitted his report on 02.01.2023. All that is pending is the final decision by the Commissioner regarding revocation of licence. In this factual matrix, we find that there is no ground to revoke the suspension of the Customs Broker Licence of the appellant at this stage. We request the Commissioner to decide the SCN dated 29.11.2022 which proposes revocation of licence as soon as possible, preferably within a month from the receipt of this order. A quick

decision will enable the appellant, if it is aggrieved by the decision, to seek remedy. We make it clear that we have not examined the merits of the case and nothing in this order should be considered as a decision by us or any aspect of the merits of the case.

11. The appeal filed by the appellant is dismissed and the impugned order is upheld.

(Order pronounced in open court on 21/03/2023.)

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

(BINU TAMTA)
MEMBER (JUDICIAL)

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