

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Customs Appeal No.40811 of 2021**

(Arising out of Order-in-Original No. 79730/2021 dated 26.2.2021 passed by the Principal Commissioner of Customs, Chennai - VIII)

**M/s. Svarad Logistics (India) Pvt. Ltd.**

**Appellant**

New No. 232, Old No. 218, 1<sup>st</sup> Floor  
Thambu Chetty Street,  
Chennai – 600 001.

Vs.

**Principal Commissioner of Customs**

**Respondent**

Chennai VIII Commissionerate  
Custom House, 60, Rajaji Salai  
Chennai – 600 001.

**APPEARANCE:**

Shri Derrick Sam, Advocate for the Appellant

Ms. Anandalakshmi Ganeshram, Superintendent (AR) for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No. **40096 / 2023**

Date of Hearing : 28.02.2023

Date of Decision: 28.02.2023

The present appeal is filed against Order in Original No. 79730/2021 dated 26.2.2021 passed by the Principal Commissioner of Customs, Chennai – VIII imposing a penalty of Rs.20,000/- on the Customs broker M/s. SVARAD Logistics (India) Pvt. Ltd., (SVARAD), the Customs Broker (CB) who filed 6 shipping bills all dated 19.3.2019 on behalf of three exporters for the export of 'ladies synthetic footwear' and 'ladies footwear' under CTH 64059000. On examination of the goods at the time of export by customs, it was noticed that the goods have been

overvalued and were of very low quality. It was alleged that the exporter had overvalued the goods in order to claim excess export benefits. A penalty was imposed on the CB under Regulation 17(7) of the Customs Broker Licensing Regulations, 2018 (CBLR) as the adjudicating authority was of the view that the KYC verification was not done in a proper manner and hence they had erred in their duty as a Customs Broker.

2. I have heard Shri Derrick Sam, Advocate on behalf of the appellant and Smt. Anandalakshmi Ganesh, AR for Revenue.

3. Learned counsel Shri Derrick Sam has stated that it is not correct to say that SVARAD has erred in their duty as a Customs Broker. Regulation 10(n) of CBLR, 2018 expects a CB to verify the identity and functioning of their clients. They had done so by way of obtaining the IEC, GST documents, KYC authorization documents and export business card from their clients which they had also submitted to SIIB during the investigation. As per the decisions of the Tribunal in the cases of APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi reported in 2016 (344) ELT 602 (Tri. Del.) and Thawerdas Wadhoomal Vs. Commissioner of Customs (General), Mumbai reported in 2008 (221) ELT 252 (Tri. Mum.), once the importers' details as available in the IEC, PAN card, GST documents etc. have been checked by the appellant, no physical verification of importer's premises is mandated in the Regulation nor is it a general requirement as per the business practice. He further

referred to the decision of the Hon'ble Tribunal in the case of Seaswan Shipping and Logistics vs Commissioner of Customs, Chennai II [2022 (380) ELT 358 (Tri. Chennai)], and stated that the impugned order has been issued after the conduct of an inquiry under Regulation 17 of CBLR which was in their favour. However, there is no murmur about the inquiry report in the impugned order and in case the adjudicating authority was in disagreement with the inquiry report, they (SVARAD) should have been put on notice on the grounds of disagreement so that they could defend their case which was not done in the process of issuing the impugned order. Further, he relied on the judgment of the Hon'ble High Court of Delhi in the case of Kunal Travels (Cargo) Vs. Commissioner of Customs, IGI Airport, New Delhi reported in 2017 (354) ELT 447 (Del.) to submit that just because the goods which are exported do not corroborate with the declaration, it cannot be deemed to be a mis-declaration by CHA, hence there could be no guilt, wrong or fault on the appellant, which would merit a penalty, as the Shipping Bill document prepared by the CHA is based on the instructions / documents received from the exporter and therefore any information provided by the exporter cannot be attributable against the CHA. Further he stated that Regulation 17(7) of CBLR, 2018 has wrongly been invoked for imposing a penalty, as it specifically deals with matters relating to the suspension of a license only.

4. Smt. Anandalakshmi Ganesh, learned AR has given a written submission and reiterated the findings in the impugned order. She has added that the exporter had tried to mis-declare the description, quality of the goods and produced incorrect invoices to avail fraudulent and undue IGST refund. The fraud would not have come to light if SIIB has not examined the consignment. It was submitted that the KYC verification was not done by the appellant in a proper manner which is expected from a prudent and well-informed Customs Broker. During the verification of one of the premises of the exporter at New Delhi, it was found to be non-existent. She relied on the decision of the Tribunal vide Final Order No. 41391/2019 dated 22.1.2019 in the case of N.T. Rama Rao & Co. Vs. Commissioner of Customs, Chennai – VII wherein the Tribunal had held that Customs Broker should have exercised due diligence in verifying KYC norms and identity of the exporter and in the case of M/s. Sky Sea Services and Ors. Vs. Commissioner of Customs, Mumbai reported in 2022-TIOL-484-CESTAT-MUM, it was held that it was incumbent on the appellant Customs Broker that they conduct all possible inquiries through independent reliable sources / documents to verify the correctness of the client. She hence prayed that the appeal may be rejected on merits.

5. A Customs Broker provides service to the EXIM community by way of helping them in completing the documentation process for the export / import of cargo. They are required as per the

provisions of CBLR, 2018, to verify the antecedents of the importer / exporter so as to ascertain that the parties are genuine. Once a Customs Broker verifies the IEC, GST details etc. of an exporter, he could be said to have reasonably satisfied the requirement by verifying the documents which have been issued by Government departments. He is not further expected to enter into the role of an investigator and verify whether the documents issued by government departments and provided to him by the exporter have been issued after proper verification etc, so long as the authenticity of the said documents itself is not being challenged by the department. The fact that one out of the three premises of an exporter was found to be non-existent cannot be held against the Customs Broker as physical verification of the premises would not be normally expected of him. Further, the impugned order suffers from the defect of not having put SVARAD to notice on the disagreement, if any, with the report of the inquiry officer. Regulation 17(7) makes it clear that the Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry conducted by the Deputy Commissioner or Assistant Commissioner under Regulation 17(5) pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker. Hence examination of the inquiry report submitted by the Deputy Commissioner of Customs or Assistant Commissioner of Customs is not an empty formality and in case the inquiry report does not

find any violation by the CB and if the Principal Commissioner / Commissioner still wants to differ with the report, he should put the CB on notice on the grounds of disagreement with the inquiry report, so that the CB can effectively represent against the same before an order is passed. The issue has been dealt with at length in the Hon'ble CESTAT decision in the case of Seaswan Shipping and Logistics vs Commissioner of Customs, Chennai II [2022 (380) ELT 358 (Tri. Chennai)], para 13 of which is extracted below:-

*“13. These Regulations are in the nature of disciplinary rules for a Customs Broker. Revocation of licence is a major punishment which affects the livelihood of not only the Customs Broker but also those persons who are employed under him. The punishment being of such major nature, Regulation provides for the conduct of inquiry before adjudication of the Show Cause Notice issued to the Customs Broker. The inquiry proceedings is a measure to be cautious and to give sufficient opportunity to the person whose conduct is the subject matter of the Show Cause Notice. The purpose of such inquiry is to help the adjudicating authority to derive at proper conclusion based on all materials and facts that have been collected during the inquiry. The first stage of such inquiry as laid down in the Regulation is to collect material/statements so as to give opportunity to those persons who are required or relevant to be heard. In the second stage, the Regulation provides for giving opportunity to the Customs Broker to cross-examine those persons whose statements have been recorded. The inquiry officer should support his conclusion with reason. As per sub-clause (6) of Regulation 20, a copy of the inquiry report is to be served to the Customs Broker. This is to ensure that the Customs Broker is to be equipped to defend his case at the time of adjudication as the inquiry report would play a vital role in the adjudication proceedings. If the adjudicating authority proposes not to accept the conclusion arrived in the inquiry report, he has to record reasons for disagreeing with the findings of the inquiry officer. The principles of natural justice requires that a copy thereof recording the reasons of disagreement has to be supplied to the Customs Broker so that he is able to reply to the charges levelled against him as against the conclusions arrived by the inquiry officer. Thus, the adjudicating authority is bound to put to notice the Customs Broker, setting out tentative conclusions or the points on which he differs from the inquiry officer. This would facilitate and ensure the right of Customs Broker to defend his case. In the instant case, though the inquiry officer has reported that there is no violation under Regulation 11(a), (d) and (n) of the CBLR, 2013 the adjudicating authority has proceeded to conclude that there is violation of 11(a) and 11(n),*

*without informing the Customs Broker on the ground of disagreement with the inquiry report. In doing so, I find that there is violation of principles of natural justice.”*

I find that this procedure has not been followed in the impugned order and it is defective to that extent. I also find that a penalty has been imposed on the appellant, for their alleged failure to do a proper KYC verification, arising from a lack of physical check of premises of the exporters as found required under Regulation (10)(n). It is seen from a plain reading of the said provision that the CB is required to 'verify correctness of Importer Exporter Code (IEC) number, Goods and Service 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.' There is no reference to a physical verification of premises. CB these days service clients from all over the country and expecting them to verify individual premises located anywhere in the country for its functioning, would be very difficult for the CB. It is for this reason that the Regulation 10(n), states 'by using reliable, independent, authentic documents, data or information.' i.e. The verification would be satisfied if done using authentic documents, data or information. No physical verification was called for. Hence since SVARAD had verified the relevant documents possessed by the exporters and issued by government departments, the authenticity of which is not under challenge, there is no failure in this regard on their part and the penalty imposed on them under

the CBLR and is not sustainable. I also agree that a penalty, if any, could have been imposed under Regulation 18 of CBLR, 2018 and not under Regulation 17(7). The decision of the Hon'ble Tribunal vide Final Order No. 41391/2019 dated 22.1.2019 and N.T. Rama Rao & Co. M/s. Sky Sea Services and Ors. Vs. Commissioner of Customs, Mumbai reported in 2022-TIOL-484-CESTAT-MUM (supra), cited by Revenue are not relevant as they do not deal with the specific charge of improper KYC verification arising from a lack of physical check of premises of the exporters, made in the Show Cause Notice and confirmed in the impugned order.

6. For the reasons stated above, I find that SVARAD cannot be said to have violated the provisions of Regulation 11(n) of CBLR, 2018 and there was no justifiable reason to impose a penalty on them. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in court)

**(M. AJIT KUMAR)**  
Member (Technical)