

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75504 of 2025

(Arising out of Order-in-Original No. Kol/Cus/Airport/Admn/16/2023 dated 09.06.2023 passed by the Commissioner of Customs (Airport & ACC) Custom House, 15/1, Strand Road, Kolkata-700 001)

M/s. Kushagra Shipping Agency,

10, Clive Row, 1st Floor,
Room No. 5/5, Kolkata-700 001.

: Appellant

VERSUS

Principal Commissioner of Customs

(Airport & ACC) Custom House,
15/1, Strand Road, Kolkata-700 001

: Respondent

APPEARANCE:

Shri Sudhir Mehta, Sr. Advocate

MS. Riya Debnath, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76885/ 2025

DATE OF HEARING: 29.04.2025

DATE OF PRONOUNCEMENT: 10.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. Kol/Cus/Airport/Admn/16/2023 dated 09.06.2023 passed by the Commissioner of Customs (Airport & ACC) Custom House, 15/1, Strand Road, Kolkata-700 001, wherein the Custom Broker License of M/s. Kushagra Shipping Agency (herein after referred as the appellant) has been revoked. Aggrieved against the revocation of the CB License and imposition of penalty, the appellant has filed this appeal.

2. The facts of the case are that the appellant is a Customs broker having Registration No. 12-20, Code No. 2346, which is valid till 20.12.2022. On 24th February 2022, a suspension order bearing No. 04/2022 dated 24th February 2022 was served to the appellant. Subsequently, a show cause notice was served to the appellant for revocation of their license. An Enquiry has been ordered and on completion of the Enquiry an Enquiry Report was submitted by the Enquiry Officer. In the Enquiry Report, the enquiry officer held that the appellant has violated the provisions of Regulation 10 (d) by not advising the importer to comply with the provisions of Customs Act, 1962. It was also held that the appellant has violated the provisions of Regulation 10(q) of CBLR 2018 also.

2.1. On the basis of the findings in the Enquiry Report, the Ld. Principal Commissioner of Customs has passed the impugned order revoking the CB License of the Appellant and forfeited the security deposit. Aggrieved against the revocation of the CB License and imposition of penalty, the appellant has filed this appeal.

3. The appellant submitted that another show cause notice under Section 124 of the Customs Act was also issued to the appellant for the same offence. In the show cause notice, a penalty was proposed against the appellant for the same offence. Hence, no separate proceedings are warranted for the same offence and hence the revocation of the CB License and imposition of penalty are not sustainable.

3.1. The appellant submits that in the adjudication order, the Ld. adjudicating authority has upheld charge of violation of the provisions of Regulations 10 (m), (q) of CBLR 2018 and dropped other charges. Regarding the violation of Regulation 10 (d) of Customs Broker Licensing Regulation, 2018, the appellant submits that the Ld. adjudicating authority has come to the conclusion only by drawing assumptions. In the present case, the bill of entry was filed on 14th September 2021. On 18th September 2021, the importer informed the appellant that they have abandoned the goods and the appellant was asked not to proceed with the matter since the importer wanted the foreign supplier to take control of goods for the purpose of re-shipment. The appellant informed the Customs Department accordingly.

3.2. Since the appellant's appointment as CB has been revoked by the importer, they had no power to act as CB in this case. The foreign seller had already staked claim on the goods. Without instructions from client, the appellant could not do anything. Nonetheless, they made arrangement of inspection at their own cost on the directives of the Department.

3.3. The appellant submits that vide letter dated 18th September, the importer has relinquished the goods under Section 23 of the Customs Act. Thus, the appellant submits that there is no truth in allegation made in the show cause notice that the appellant did not advise the importer not to relinquish the goods. The appellant submits that the importer would act on the basis of advice given by

his Advocates and the applicability of Section 23 in the facts and circumstances of the case would be governed by the provisions of Customs Act, 1962. The appellant submits once the importer has relinquished the goods, they have no role in the clearance of the goods. Accordingly, the allegation that they have not advised the client is without any basis and hence the allegation that they have violated the Regulation 10(d) of the Customs Broker Regulation 2018 is also baseless. Thus, the appellant submits that charge of violation of Regulation 10 (d) is not tenable

3.4. The appellant submits that the other charge that they did not work with the utmost spirit and efficiency is also legally not tenable. After the appellant was asked not to act as a Custom broker and when they were discharged as a CB, they were not in a position to act as a Custom broker. In spite of the same, they made arrangement for 100% examination of goods at their own cost. There was no delay on their part. They acted with utmost spirit and efficiency at all times and therefore this charge is also not legally tenable.

3.5. The appellant submits that the charge of violation of Regulation 10 (n) of Customs Broker Regulation 2018 is also not tenable. It has been alleged that the appellant did not verify the correctness of the importer exporter code number, etc. In this regard, the appellant submits that the importer was present throughout. They have appeared in all the proceedings. They have appeared before the adjudicating authority and they were very much available. The Tribunal and the Courts have

held that it is not the obligation of a Custom Broker to visit and verify the office premises for the purpose of performance of their duties.

3.6. Regarding the charge of violation of Regulation 10 (o) of the Customs Broker Regulation 2018, the appellant submits that there was no change of their address. The appellant had opened an additional office for the purpose of logistic and accounts and therefore the charge of breach of Regulation 10 (O) is not tenable.

3.7. The appellant submits that the charge of breach of Regulation 10 (q) of the Customs Broker Licensing Regulation is not tenable. They had co-operated with the Custom Authorities. Mr. Amar Agarwal could not appear once when he was summoned, because he had COVID and when he was in the hospital. The appellant submits that the charge of violation of Regulation 10 (q) was upheld by the adjudicating authority erroneously. The adjudicating authority should have held that the appellant had given all truthful statement. The payment made by Kushagra Logistics to Bhavani Cargo for delivery of the containers from CFS to Loco, Kidderpore has no concern with the allegations and charges levelled in respect of Regulation 10 (q). Therefore, holding that the appellant has violated Regulation 10 (q) of CBLR 2018 is legally not tenable. Thus, the appellant submits that the charge of violation of 10 (q) is not substantiated.

3.8. The appellant submits that the charge of violation of Regulation 10(m) of CBLR 2018 where the adjudicating authority held that the appellant has

delayed the proceedings by 38 days was not tenable. Since the appellant was discharged from acting as a Customs broker and 'no objection' from him was taken for appointment of another Custom Broker, the liability and duty cast on the appellant as a Custom broker has ceased and after such cessation the appellant could not be made liable for delay. In any event, on the request of the department the appellant did provide all the amenities for inspection at their own cost. The appellant submits that they have been penalized for violation of Regulation 10 (m) which is the alleged charge of not expeditiously providing inspection of goods, is incorrect. The finding by the adjudicating authority regarding violation of 10 (m) of CBLR 2018 is not substantiated with any evidence. Therefore, the adjudicating authority has erred by holding that the appellant had violated Regulation 10 (m) of CBLR 2018.

3.9. The appellant submits that the statement of a co-accused which is self-contrary and contradictory cannot be relied upon in this proceedings. If the statements are read as a whole it would appear that the appellant was not at all liable for the alleged infraction. The appellant submits that material exonerating them are treated as implicating materials by the adjudicating authority. Apart from the statement of the co-accused, there is no material evidence relied on in the adjudication order. Therefore, the imposition of penalty of Rs.50,000/- is untenable and is liable to be dropped.

4. The Ld. A.R. reiterated the findings in the impugned order. He submits that the Inquiry Officer has found that the charge against the appellant are

substantiated and accordingly, the adjudicating authority has rightly revoked the licence and imposed penalty.

5. Heard both sides and perused the appeal documents.

6. In the present case, we observe that the bill of entry was filed on 14th September 2021 and on 18th September 2021, the importer informed the appellant that they have abandoned the goods and the appellant was asked not to proceed with the matter since the importer wanted the foreign supplier to take control of goods for the purpose of re-shipment. We find that the appellant has given 'no objection' to the importer to appoint any other CB to deal with the clearance of the goods covered in the said bill of entry. Thus, we observe that once the appellant's appointment as CB has been revoked by the importer, they had no power to act as CB in this case. It is also on record that the foreign seller had already staked claim on the goods. We observe that without instructions from client, the appellant could not do anything. Nonetheless, the appellant made arrangement of inspection of the goods.

6.1. We observe that vide letter dated 18th September, the importer has relinquished the goods under Section 23 of the Customs Act. It is the prerogative of the importer whether to clear the goods or relinquish it. Once the importer has decided to relinquish the goods and asked the appellant not to proceed in the matter, the appellant had no further role in the matter. Thus, we observe that there is no truth in allegation made in the impugned

order that the appellant did not advise the importer not to relinquish the goods. Accordingly, we hold that the allegation that they have not advised the client properly is without any basis. Thus, we hold that that charge of violation of Regulation 10 (d) is not sustained.

6.2. Regarding the charge of violation of Regulation 10(m) of CBLR 2018, we observe that the adjudicating authority has held that the appellant has delayed the proceedings by 38 days and hence they have not discharged their duties as a CB. We find that the appellant has been penalized for violation of Regulation 10 (m) on the charge of not expeditiously providing inspection of the goods. In this regard, we observe that the importer has restrained the appellant from acting as a Customs broker and taken 'no objection' from him for appointment of another Custom Broker. Thus, we observe that the liability and duty cast on the appellant as a Custom broker has ceased and after such cessation the appellant could not be made liable for delay, if any, on the clearance of the goods. Further, from the records we observe that the appellant did provide all the amenities for inspection. Thus, we hold that the findings of the adjudicating authority that the appellant has violated Regulation 10 (m) of CBLR 2018, is not substantiated.

6.3. Regarding the charge violation of Regulation 10 (n) of Customs Broker Regulation 2018, we observe that it has been alleged that the appellant did not verify the correctness of the importer exporter code number, etc. In this regard, we observe that the importer was present throughout.

They have appeared in all the proceedings. They have appeared before the adjudicating authority and they were very much available. Further, we observe that it is not the obligation of a Custom Broker to visit and verify the office premises of the importer for the purpose of performance of their duties. Accordingly, we hold that the allegation of violation of Regulation 10 (n) of Customs Broker Regulation 2018 in the impugned order is not sustained.

6.4. Regarding violation of the Regulation 10 (q) of the Customs Broker Licensing Regulation, we observe that the appellant had co-operated with the Custom Authorities. There is no evidence available on record that the appellant has not cooperated with the authorities. Once the importer has decided to relinquish the goods and asked the appellant not to proceed in the matter, the appellant had no further role in the matter. Therefore, we hold that the allegation that the appellant had violated Regulation 10 (q) of CBLR 2018 is not tenable. Accordingly, we hold that the charge of violation of Regulation 10 (q) of CBLR 2018, is not substantiated.

6.5. In view of the above discussions, we hold that the allegations in the impugned order that the appellant has violated the Regulations 10(d), (m), (n) and (q) of the CBLR, 2018 are substantiated and accordingly, we hold that the revocation of the licence on the allegation of the above said Regulations of CBLR, 2018 is not sustainable and hence we set aside the revocation of licence in the impugned order. Since the allegations in the impugned order are held as not sustainable, we hold that no penalty imposable on the appellant and

Appeal No.: C/75504/2025-DB

hence we set aside the penalty imposed on the appellant.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 10.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP