

2. The records indicate that an offence report dated October 15, 2018 with a show cause notice dated September 28, 2018 was submitted by the Deputy Director, Directorate of Revenue Intelligence to the Commissioner on October 22, 2018. The offence report mentions that certain **importers** were misusing the Duty Free Import Authorization³ by importing maize popcorn and declaring the same as maize-corn under CTH Code 10059000 and thus availing undue benefits of DFIA. It was also stated that the **exporters** had obtained DFIA by exporting corn starch, maize starch powder, protein concentrate corn gluten, liquid glucose, maize corn starch, in which locally procured agricultural products had been used as the main ingredient. Acting on the said intelligence, there was an alert which was put on October 26, 2017 through Risk Management Division, Mumbai for the Bills of Entry where the goods were classified under CTH 10059000.

3. During the scrutiny of the data base, it was found that one importer by the name of M/s Encanterra Traders Pvt. Ltd.⁴ had **imported** the said goods by filing two bills of entry at Chennai Seaport in which the goods were declared as popcorn variety of maize corn and thus DFIA benefit was availed to the tune of Rs. 42,56,540/-. It was further noticed that Encanterra Traders had also **imported** the goods at ICD, Tughlakabad and at Nhava Sheva Port and thus claimed benefits of Rs. 65,67,614/- and Rs. 26,11,520/- respectively. The goods at these two ports were also declared as "popcorn variety of maize corn" under Customs Notification dated April 01, 2015.

3. **DFIA**

4. **Encanterra Traders**

4. During the scrutiny it was also found that Encanterra Traders had **exported** 'protein concentrate pop-corn gluten' under DFIA from ICD Tughlakabad through six Shipping Bills and the customs clearance work of export was facilitated by a Customs Broker called M/s Transpeed Logistics International Private Limited, which is the appellant in this appeal.

5. The dispute in this appeal is restricted to these six export Shipping Bills.

6. A statement of Lal Chand Sharma, F-card holder of the appellant was recorded on September 04, 2018 under section 108 of the Customs Act, 1962, wherein he interalia stated that the customs clearance of export shipments covered under the aforesaid six Shipping Bills of Encanterra Traders was done by them and the goods exported were 'protein concentrate protein gluten' under DFIA. It was further stated by Lal Chand Sharma that Rakesh Kumar and Manoj Kumar were Directors of Encanterra Traders and that proper 'Know Your Customer'⁵ documents were submitted by him. He also stated that the details of the Directors and contact details of Encanterra Traders were referred by M/s Reliance Freight LLC, which is a Dubai based company. He also stated that Anil, an employee of the appellant, had been contacting Rakesh Kumar, Director of Encanterra Traders for KYC and other documents which were required for export and all the documents were provided by Rakesh Kumar and that communications with the Directors were done either

5. **KYC**

through telephone or through e-mail and the printout of the e-mails were also submitted by Lal Chand Sharma.

7. The Commissioner of Customs, by order dated October 30, 2018 suspended the License of the appellant with immediate effect under regulation 16(1) of the Customs Brokers Licensing Regulations, 2018⁶. The aforesaid suspension order was, thereafter, confirmed by the Commissioner of Customs by order dated November 22, 2018. This order was assailed by the appellant by filing Customs appeal NO. 54037 of 2018 before the Tribunal. The appeal was allowed and the suspension order dated November 22, 2018 was set aside by order dated June 19, 2019. The relevant portion of the order passed by the Tribunal is reproduced.

“11. Having considered rival contentions, we find that the allegations of Revenue against the Appellant CHA are prima-facie vague for the reason that the offence report is based on one show cause notice No. 121/2018, issued in September, 2018 on the aforementioned parties being M/s Encanterra Traders Private Limited, M/s Chef’s Choice, M/s Hira Traders and their Directors/Partners/Prop Wherein the Appellant CHA has not been made a co-noticee. **Further, there is no allegation of connivance on the part of the Appellant CHA firm with the aforementioned parties. Further, the offence report has been issued almost after one year when the offence was detected in October, 2017 and investigations began. We also find that the Appellant have not violated any of the CHA regulations and have obtained proper documents required to meet the requirement of KYC.** Further, no means rea has been alleged against the Appellant nor there is any finding

6. **2018 Regulations**

regarding illegal gain made against the CHA. Further, Shri Lal Chand Sharma of the CHA company have retracted his statement particularly answer given to Question No. 1 and 2 in the statement recorded on September 04, 2018 at the first opportunity by letter dated September 10, 2018, addressed to the Deputy Director, DRI, Delhi, stating there that the answer to the said questions were dictated by the officer threatening him of harassment, if he does not toe their line. It was further clarified that the Appellant undertook work after proper authorization. Further, we find that the subsequent non availability of the said M/s Encanterra Traders Private Limite at their address or its Directors at their earlier residential address does not lead to any conclusion that the said M/s Encanterra Traders Private Limited is a fictitious company. **We further find that it is nowhere alleged, in what way the Appellant did any irregularity in handling export consignment, for which they have filed the Bill of Entry on behalf of the said M/s Encanterra Traders Private Limited. The Appellant have had also verified the IEC code of the said client M/s Encanterra Traders Private Limited and found to be in order. Further, no physical verification of the premises or address of the IEC holder is mandated in the CBLR regulation, nor it is a general requirement.** Thus, we find the that there is no case made out against the Appellant CHA, as alleged in the offence report or in the impugned order of suspension. Accordingly, **we set aside the impugned order of suspension and allow the appeal."**

(emphasis supplied)

10. However, before the matter was decided by the Tribunal, a show cause notice dated January 14, 2019 had been issued to the appellant to show cause as to why-

- (a)** The Customs Broker should not be held responsible for contravention of various provisions of regulations

10(a), 10(d), 10 (e) and 10 (n) of the 2018 Regulations;

- (b)** The License should not be revoked and part or whole of the security submitted at the time of issuance of the License, should not be forfeited in terms of regulation 18 of the 2018 Regulations for failure to comply with the provisions of regulations 10(a), 10(d), 10(e) and 10(n) of the 2018 Regulations; and
- (c)** Penalty should not be imposed in terms of regulation 18 of the 2018 Regulations.

11. The appellant was granted time to file a reply to the show cause notice before the enquiry officer, who was further directed to submit a report within ninety days. This report was directed to be shared with the appellant for comments.

12. The enquiry officer found the charges levelled against the appellant in the show cause notice to be proved. After submission of the enquiry report, the appellant was granted a personal hearing. Thereafter, the order dated July 05, 2019 was passed revoking the License of the appellant and also forfeiting the security deposit. Penalty was also imposed upon the appellant.

13. It is this order dated July 5, 2019 that has been assailed in this appeal.

14. Shri Akhil Krishan Maggu, learned Counsel for the appellant made the following submissions:-

- (i)** The appellant had followed all the provisions of the 2018 Regulations and infact had duly carried out the KYC procedure norms provided for in the said Regulations and the Board Circular dated April 08, 2010;
- (ii)** The appellant had no reason to doubt the veracity of the facts mentioned in the KYC documents as the same had been issued by the Government of India. All these documents were submitted by the appellant to the Investigation Agency;
- (iii)** There was no violation of regulations 10(a), 10(d), 10 (e) and 10(n) of the 2018 Regulations. Copies of the authorisation letters had been submitted as also the Importer Exporter Code number and GST number. The identity of clients was established by the KYC documents. Due diligence as per the practice was undertaken by the appellant. There was also no act or omission on the part of the F-Card holder since he acted in accordance with the Board Circular and exercised due diligence by procuring all the documents in accordance with the 2018 Regulations;
- (iv)** The duty of a Customs Broker is confined to obtaining the relevant KYC documents and he cannot be held responsible for not physically verifying the address of the exporter, as has been observed by the Tribunal in various decisions; and

(v) In support of the submissions, learned counsel for the appellant placed reliance on the following decisions:

- (a) Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi⁷.**
- (b) Commissioner of Customs vs. Shiva Khurana⁸.**
- (c) Nimesh Suchde vs. Commissioner of Customs, Nhava Sheva⁹**
- (d) Setwin Shipping Agency vs. Commissioner of Cus. (General), Mumbai¹⁰**

15. Shri Vivek Pandey, Authorised Representative of the Department made the following submissions:-

(i) As per DGFT Policy Circular dated June 1, 2009, it is clear that at the time of issuance of IEC, DGFT is only conducting limited physical verifications (10%) of IEC holders. It is part of the Government Policy not to physically verify the address of the IEC holders at the time of issuance of IEC. However, at the time of import and export, the intent of the Government to get address of the IEC holders verified by the CHA is very clear from regulation 10 of the 2018 Regulations;

(ii) The mandate of regulation 10(n) , which requires the CHA to verify the correctness of importer exporter code (IEC) and functioning of his client at the declared address using reliable, independent, authentic documents, data or

7. 2017 (354) ELT 447 (Del.)

8. 2019 (267) ELT 550 (Del.)

9. 2007 (209) ELT 276 (Tri.-Mumbai)

10. 2010 (250) ELT 141 (Tri.-Mumbai)

information , cannot be ignored . Hence, it will not to correct to say that the responsibility of address verification of IEC holders is on the issuing authority i.e. DGFT or on the assessing officer of customs and not on the CHA. The CHA, inspite of being a private entity, is a licensee under bond and has to follow these regulations framed by the Government;

(iii) The above stand that the responsibility of CHA is not merely to take documents but also to verify the address fully completely and correctly has been expressed by the Tribunal in **Millennium Express Cargo Private Limited vs. Commr. Of Cus. (Airport & Admn.), Kolkata¹¹**, which has been approved by the Delhi High Court in appeal. Thus, the decision of the Delhi High Court in **Kunal Travels and Shiv Khurana** would not come to the aid of the appellant;

(iv) The so called authorisation letter for customs clearance dated September 19, 2016 appears to be an afterthought as it does not bear any acknowledgement or receipt. The said authorisation is dated September 19, 2016, which is nine months in advance to the first export shipment which was done in June 2017, and so makes it suspect;

11. 2017 (346) ELT 471 (TRI – DEL)

(v) The Director of Encanterra Traders, Rakesh Kumar never appeared before Customs or DRI during the entire investigation in spite of seven summons issued to him; and

(vi) Tarun Jain and Pankaj Batra have clearly accepted and elaborated the dummy nature of Encanterra Traders in their voluntary statements which have never been retracted.

16. The submissions advanced by the learned Counsel for the appellant and the learned Authorised Representative of the Department have been considered.

17. The show cause notice alleges violation of regulations 10 (a), (d), (e) and (n) of the 2018 Regulations. They are reproduced:

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

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) 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;

(n) 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;

18. The Circular dated April 08, 2010 issued by the Central Board of Excise and Customs, New Delhi contains clarifications relating to Know Your Customer (KYC) norms for identification of clients by Customs House Agents. The said Circular is reproduced below:

CIRCULAR DATED 08-04-2010

“(iv) Know Your Customer (KYC) norms for identification of clients by CHA’s:

6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the “Know Your Customer (KYC)” guidelines for CHA’s so that they are not used intentionally or unintentionally by importers/exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of import export code Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/ customer is enclosed in the Annexure. **It would also be obligatory for the client/ customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organisation such as company/trust etc., and any two of the listed documents in the annexure.”**

(emphasis supplied)

19. The appellant has submitted a chart that contains the regulations of which violation has been alleged, the ingredient of the regulations, the findings of the Commissioner and the submissions of the appellant. The same are contained in the following Table:

Regulation invoked	Ingredient of the Regulation	Finding of Commissioner	Submissions of the Appellant
10(a)	Obtain authorization from the company which has employed the Customs Broker	It is stated that the authorisation is pertaining to only five export invoices and the same is issued nine months prior to the date of invoices which raised a doubt on the authenticity of the authorization. The ownership of M/s Encanterra Traders is doubtful and the CB could not produce any documents as to who signed the authorization for custom purposes.	Copies of the KYC and authorisation letter dated 19.09.2016 of Encanterra Traders were submitted vide letter dated 10.09.2018, as is clear from paragraph I at page 36 of the inquiry report dated 11.04.2019. The KYC was also submitted and the same is an admitted fact as per statement dated 04.09.2018 mentioned at paragraph 18 of impugned order.
10(d) AND 10(e)	Advicethe client to comply with the provisions of the Act and the Regulations AND Exercise due diligence to ascertain the correctness of any information which he imparts to a client.	The firm in question was proved to be non-existing and, therefore, there is no question of advising his client to comply with provisions of the Act. Customs Broker has failed to exercise due diligence to ascertain the correctness of the information which he furnished for the said firm since he never visited the two firms nor met any of the partners.	Due diligence does not include physical verification. As per practice IEC number, GST number and identity of clients has been done by taking all KYC norm documents prescribed in Circular 09/2010. The KYC was submitted by the CB and same fact is admitted in statement dated 04.09.2018 of the CB and is mentioned at paragraph 18 of impugned order.
10(n)	Verify correctness of IEC, GSTIN, identity of his client and functioning of his client at the declared address by using reliable independent authentic documents data or information.	The Customs Broker indulged themselves in the clearance of the impugned export consignments without verifying the antecedents of exporter and without verifying the KYC of the exporter because the exporter Encanterra Traders was existed only on paper and its ownership was doubtful too.	The entire KYC was submitted by the Customs Broker and the verification was done as the employee of the Customs broker Anil visited and met the Directors and the entire communication with Encanterra Traders was done through proper mail and the entire mail conversation is annexed at Annexure N of the appeal. Self-Attested PAN card, Aadhar card of the Director and PAN Card of the Company was submitted vide letter dated 10.09.2018 and the same was also submitted during statement of the Customs. Broker dated 04.09.2018 as mentioned at para 18 at page 23/24 of impugned order dated 05.07.2019, but in the order nothing of such sought have been discussed. Thus, physical verification cannot be a ground for violating Regulation 10(n).

20. Before examining the violation of the various regulations noted in the order of the Commissioner, it would be necessary to keep in mind certain important facts. The offence report relates to certain importers who were mis-using the DFIA by importing maize popcorn and declaring the same as maize corn in order to avail undue benefits of DFIA. It also mentions about exporters who had obtained DFIA. Encanterra Traders had imported and had also exported the goods. The appellant had undertaken the work of customs clearance and had acted as a Customs Broker only for Encanterra Traders, for which six export Shipping Bills were filed in the years 2016 and 2017. The appellant had not submitted documents of Encanterra Traders for import of goods.

21. It needs to be noted that the alleged fraud relates to import of popcorn by declaring the same as maize corn so as to avail undue benefits of DFIA. This fact has to be kept in mind in relation to the allegations made against Encanterra Traders because so far as the appellant is concerned, allegations have to be examined only in relation to the six export Shipping Bills. The appellant also claims that there is nothing on the record to substantiate that the appellant was aware about the ill-intention of Encanterra Traders in relation to import of goods since the appellant only undertook the clearance of export consignments and the export was under DFIA application. For this purpose, the appellant undertook a proper enquiry and all the KYC documents obtained from Encanterra Traders were submitted to the office of the Director of Revenue Intelligence through a letter dated

September 10, 2018. The appellant claims that Encanterra Traders cannot be said to be a fictitious firm as the appellant sought verification from the Registrar of Companies and Director General of Foreign Trade who had provided the certificate as well as the IEC. The appellant also claims copies of the Aadhar Card, IEC, Pan Card, Certificate of Incorporation of the Company, Memorandum of Association and Article of Association of the Company were submitted and one Anil, an employee of the appellant, was in constant touch with the Rakesh who was the Director of Encanterra Traders through e-mail and phone and he had also met Rakesh who gave the KYC documents. It is, therefore, the contention of the appellant that Encanterra Traders existed and was not a fictitious firm. The appellant also claims that there is no requirement in law for conducting a physical verification of the premises of Encanterra Traders.

22. The Commissioner, before examining the violation of the various provisions of the 2018 Regulations, observed that the Customs Broker (the appellant) was involved in clearing export consignment of a firm Encanterra Traders "which existed only on paper having doubtful ownership" and that the appellant "facilitated the export consignment without verifying the antecedents and working (from the declared address) of the exporter firm and the two foreign entities through which the appellant got the job of customs clearance of the six export consignments and their relation with Encanterra Traders". The observations are as follows:

“37. ********* I find that the CB in their representation have submitted that the alleged fraud is related to the import consignments and that they undertook work of Customs clearance of impugned export consignments and acted as Customs broker only for M/s ETPL where only shipping bills filed. Here, I find that the CB is incorrect in holding that the said fraud is limited only to import consignments whereas the instant case is about misuse of export benefits for import of items without payment of Customs duty and without discharging applicable export obligations and I find that the CB is one of the cogs of this nefarious wheel as the CB was involved in clearing export consignment of a firm i.e. M/s ETPL which existed only on paper having doubtful ownership in view of statements dated 28.03.2018, 01.06.2018 & 04.06.2018 of Shri Pankaj Batra and statements dated 17.04.2018 & 24.09.2018 of Shri Tarun Jain wherein they disowned ownership of M/s ETPL and shifted the blame onto each other. **The culpability of the CB is proven more when I find that the CB facilitated the export consignment without verifying the antecedents & working (from the declared address) of the exporter firm and the two foreign entities through which the CB got the job of Customs clearance of the six export consignments & their relation with M/s ETPL.**

38. **The CB had helped M/s ETPL clear their six export consignments vide Shipping Bill Nos. 1173130 dated 21.09.2016, 7732664, 7732665, 7732730, 7732720 & 7732671 all dated 01.08.2017 from ICD-Tughlakabad which implies that the CB was in touch with the operators of M/s ETPL at least for the period of September, 2016 to October, 2017.**

39. I find that Shri Lal Chand Sharma, F-card holder of the CB in his statements has admitted their fault that they did not verify antecedents of M/s ETPL in terms of Customs Broker Licensing Regulations and that they never met any of the directors of M/s ETPL. **The Inquiry Officer in his report also has stated that the CB could not produce authorization from M/s ETPL. In their representation dated 22.04.2019 mentioned supra, the CB has stated that the statement of Sh. Lal Chand Sharma was recorded on 04.09.2018 but the answers of question number 1 and 2 were made to write under threat and coercion.** The CB vide their letter dated 01.11.2018 (received in the office of the Commissioner of Customs (Airport & General), NCH, New Delhi on 01.11.2018) have submitted copy of a letter dated 10.09.2018 addressed to Shri Rakesh Kumar (SIO), DRI, DZU, New Delhi wherein they have rebutted answers to question no. 1 and 2 contained in statement dated 04.09.2018 of Shri Lal Chand Sharma and stated that their employee Shri Suraj Kumar visited office premises of M/s ETPL. Here, I find that the said letter dated 10.09.2018 of the CB does not bear any acknowledgement and the retraction/rebuttal has been given after six days of the statement recorded voluntarily on 04.09.2018. Moreover, the CB has not produced any evidence to prove charge of threat and coercion. Importantly.”

(emphasis supplied)

23. After discussing the violation of regulations 10(a), (d), (e) and (n) of the 2018 Regulation. The Commissioner observed:

42. In view of the discussion above, I concur with the findings of the Inquiry Officer and hold that CB firm has failed in complying with responsibilities/obligation cast upon them as per the provisions of Regulations 10(a), 10(d), 10(e), and 10(n) of the CBLR, 2018 [read with erstwhile Regulation 11(a), 11(d), 11(e) and 11(n) of the CBLR, 2013]. Accordingly, I pass the following order:-

ORDER

In exercise of the powers conferred under Regulation 14 and Regulation 17(7) of CBLR, 2018 [erstwhile Regulation 18 and Regulation 20(7) of CBLR, 2013],

- a. I revoke the CB License No. R-26/DEL/CUS/2007 (PAN: AABCT4959M) valid up to 04.09.2027 of M/s Transpeed Logistics Pvt. Ltd., Khasra No. 339/2, Shahbad Mohammadpur, New Delhi-110061.
- b. The revocation of the CB license is independent and without prejudice to the earlier order passed by the Commissioner of Customs.
- c. I forfeit the security deposit of 75,000/- (Rs. Seventy Five Thousand Only) submitted by the CB.
- d. I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) under Regulation 18 of the CBLR, 2018.

24. Each violation of the regulation alleged in the show cause notice shall be taken up separately.

10 (a) of the Licensing Regulations

25. Regulation 10(a) deals with obligations of Customs Broker and provides that the Customs Broker shall obtain an authorisation letter from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever

required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs. The Commissioner has recorded the following finding in regard to violation of regulation 10 (a):

"41.1 When asked for providing the authorization from the Director of the company for clearing customs cargo as per Customs Broker Licensing Regulations, he could not provide the same. The Inquiry Officer in his report dated 11.04.2019 also talks about non-submission of authorization. **The CB along with their letter dated 01.11.2018 (received in the office of the Commissioner of Customs (Airport & General), NCH, New Delhi on 01.11.2018) have submitted copy of an authorization said to be issued by M/s. ETPL addressed to 'The Deputy Commissioner of Customs, ICD/TKD, New Delhi' which is signed by some unnamed authorized signatory and the said letter does not bear any acknowledgement whatsoever.** I find from the said authorization letter that the same pertains to five export invoices no ENC/0011/17-18 dated 26.06.2017 and ENC/0012/17-18 to ENC/0015/17-18 dated 28.06.2017. **However, the date mentioned on the said authorization is 19.09.2016 (meaning thereby that the authorization has been issued more than 9 months prior to the date of invoices, that too for next financial year) this certainly raises questions on the authenticity of the so called authorization. Moreover, as discussed above ownership of M/s ETPL is doubtful and the CB has not produced any documents showing who authorized the above mentioned signatory to sign documents for Customs purposes.** Thus, it is clear that the CB has violated the provisions of Regulation 10(a) of CBLR, 2018 [erstwhile Regulation 11(a) of CBLR, 2013] by not getting proper authorization the exporting firm."

(emphasis supplied)

26. Learned Counsel for the appellant has referred to a letter dated September 10, 2018 submitted by Lal Chand Sharma, authorized signatory of the appellant, to the Director of Revenue Intelligence regarding submission of the documents. The said letter is reproduced below:

"To
 Sh. Rakesh Kumar(SIO),
 Director of Revenue Intelligence (DRI)
 Delhi Zonal Unit (DZU)
 CGO-Complex, Lodhi Road,
 New Delhi-110003

SUB: Submission of the Document

Reference: F.NO. DRI/DZU/23-Eng.167/2017 dated 30.08.2018.

Respected Sir,

The undersigned is submitting the following documents as requested on the summons dated 30.08.2018 and which was again requested by your good-self on 04.09.2018.

The list of the document as follows.

First Container number CRXU 9544997/40HQ
 M/S ENCANTERRA TRADERS PVT. LTD.
 Invoice number ENC/001/16-17 Dated 19.09.2016
 Shipping Bill number 1173130 Dated 21.09.2016

Enclose document list as under.

1. We have received above customer routing order/Nomination Shipment from our Dubai Cargo Partner office M/S. RELIANCE FREIGHT SYSTEM L.L. CPO BOX 32049 DUBAI UAE (Enclose Communication for your reference.
2. On the Basis on nomination routing Shipment. We approach to Customer here on their contact number provided by Dubai Cargo Partner and asked invoice and packing list. (Enclose Shipper's communication copy with our Office Staff)
3. As per CHA regulation and as per Customs act. We received and collect all the KYC (Original Document) from supplier and keep in our record (enclose copy for your reference)
4. Enclose Shipper's authorization letter and request for handle customs clearance of this shipment (Enclose Original Copy)
5. Enclose invoice and packing list
6. Shipping Bill copy
7. DFIC LIC application
8. Container stuffing report
9. Bill of lading copy
10. Pre Alert copy send to our Overseas office
11. Document received acknowledgment copy from customer which is taken by our office representative (physically signature and took this ack from shipper's office. (Enclose Original for your reference.)"

27. Out of the eleven documents, the document at serial number. 4 is the Shipper's authorization letter. The same is reproduced below:

"The Deputy Commissioner of Customs
ICD/TKD, New Delhi

Subject : **Authorization for Customs Clearance**

Respected Sir,

We here by Authorize M/S. Transpeed LOGISTICS PVT LTD Address PLOT NO 47. SECOND FLOOR, KHESRA NO. 325/1/2 NATIONAL HIGHWAY-8, RANGPURI, NEW DELHI 110037. INDIA for Customs Clearance of our export shipment to our Dubai Buyer.

Detail as under.

Invoice number ENC/001/16-17 Dated 19.09.2016
Original KYC document handed over to CHA.

Request you to kindly accept & acknowledge the same.
Thanking You

M/S. ENCANTERRA TRADERS PVT. LTD.

Rakesh Kumar

(SD)
Auth. Signatory"

28. The Commissioner has ignored this letter for the reason that the authorization letter is signed by some unnamed authorized signatory. A perusal of the said letter clearly shows that it is signed by Rakesh Kumar, who is the Director of the Company. The Commissioner has also ignored this authorisation letter for the reason that it is dated September 19, 2016 and, therefore, has been submitted nine months prior to the date of invoices, which creates doubts about the authenticity of the authorization. This finding of the Commissioner is based purely on a presumption, as there has to be a time gap between the issue of the authorization letter and the invoice bills. What has also weighed with the Commissioner is the fact that the ownership of Encanterra Traders is doubtful as the Customs Broker did not produce any document to indicate who authorized the signatory to sign the documents. The Commissioner completely failed to appreciate the Rakesh Kumar was the Director of the Company.

In fact the KYC documents were also enclosed with the letter, which amongst others, included the Aadhar Card of Rakesh Kumar. The Commissioner, therefore, could not have ignored the authorisation letter. The Commissioner, therefore, committed an illegality in holding that Regulation 10(a) of the Licensing Regulations had been violated.

10(d) and 10 (e) of the Licensing Regulations

29. These two Regulations were taken up together by the Commissioner. Regulation 10(d) requires a Customs Broker to advise his client to comply with the provisions of the Act and the Rules and Regulations. Regulation 10(e) requires a Customs Broker to 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.

30. In regard to the said Regulations, the Commissioner made the following observations:

"41.2 Here, I find from the discussion in the foregoing paras that during the investigation by DRI, M/s Encanterra Traders Pvt. Ltd. was found to be a fictitious and non-existent firm which had doubtful ownership in view of statements dated 28.03.2018, 01.06.2018 & 04.06.2018 of Shri Pankaj Batra and statements dated 17.04.2018 & 24.09.2018 of Shri Tarun Jain wherein they both disowned ownership of M/s ETPL and shifted the blame onto each other. *** The CB facilitated M/s ETPL in the Customs clearance of aforesaid Export shipments in the time span of September, 2016 to October, 2017. I find that the CB did not exercise due diligence and did not advise his client to comply with the provisions of the Customs Act and Customs Tariff Act as there is nothing brought on record by the CB to suggest otherwise. Thus, the CB had failed to discharge their responsibilities, duties and obligations cast upon them as a Customs broker**

under the provisions of the Regulation 10(d) of CBLR, 2018 [erstwhile Regulation 11(d) of CBLR, 2013] and Regulation 10(e) of CBLR, 2018 [erstwhile Regulation 11(e) of CBLR, 2013].”

(emphasis supplied)

31. Learned Counsel for the appellant submitted that due diligence does not mean actual physical verification. In fact, the practice always has been to verify the correctness of the information provided by examining the KYC documents prescribed in the Circular dated April 08, 2010.

32. Paragraph 6 of the Circular provides for certain obligations on the Customs Broker to verify the correctness of Import/Export Code Number, identity and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information. For this purpose, detailed guidelines on the features to be verified and obtained from the clients have been provided in the Annexure to the Circular. It has also been mentioned in the Circular that it would be obligatory for the client/customer to furnish a photograph in the case of an individual and those of the authorised signatory in respect of other forms of organisations, such as company/trusts and any two of the listed documents mentioned in the Annexure.

33. Out of the documents listed in the Annexure to the Circular, only two documents have to be obtained. The appellant did obtain two documents. Neither the Circular nor the Annexure requires any physical verification of the premises. It is not the case of the Department that the documents that had been obtained were forged documents. As noticed above, the appellant

had submitted all the KYC documents and other documents which the appellant had obtained from Encanterra Traders to the Office of the Director of Revenue Intelligence by letter dated September 10, 2018. It was also stated that Anil was an employee of the appellant who had been contacting the Directors of Encanterra Traders who had supplied the documents. The reply submitted by the appellant has not been discussed at all nor any reason has been assigned as to why these documents could not be considered. The Commissioner appeared to have been swayed by the fact that the Company did not exist and so the documents cannot be relied upon. Encanterra Traders cannot be said to be a fictitious firm as proper verification was done from the Registrar of Companies and the Director General of Foreign Trade who had provided the Certificate as well as the IEC. The appellant had also submitted copies of the Aadhar Card, IEC, Pan Card, Certificate of Incorporation of the Company, Memorandum of Association and Article of Association of the Company.

34. The provisions of Regulation 10(e) of the Licensing Regulations were examined at length by the Delhi High Court in **Kunal Travels** and the relevant observation are as follows:

"12.Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. **The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. The CHA is not an inspector to weigh the genuineness**

of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. 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. **There is nothing on record to show that the Appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported.** In the absence of such knowledge, there cannot be any mens rea attributed to the Appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as misdeclaration by the CHA because the said document was filed on the basis of information provided to it by M/s. H.M. Impex, which had already been granted an IE Code by the DGFT. **The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the Appellant cannot be faulted.** The IE Code is the proof of *locus standi* of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR, 2004 requires the CHA to : **"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"** (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the

consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the Appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the Appellant under Regulation 13(n)."

(emphasis supplied)

35. It is clear from the aforesaid decision of the Delhi High Court that there is no obligation on the Customs House Agent to look into the information made available by the exporter/exporter. The Customs House Agent is merely a processing agent of documents with respect to clearance of goods through Customs House and he is not an inspector to weigh the genuineness of the transaction. When the Importer/Exporter Code Number was provided and before this code was issued a background check of the said importer/exporter is undertaken by the Customs Authority, there should be no doubt about the identity of the said exporter. It would be too onerous to expect a Customs House Agent to inquire into what is stated in the documents when there is a presumption that an appropriate background check is done by the Customs Authorities. In fact, the grant of Importer/Exporter Code Number is a proof regarding verification of facts and if the grant of such a code number to an entity at the address

mentioned is in doubt, then for such erroneous grant of the Importer/Exporter Code Number, the appellant cannot be faulted.

36. It transpires that for issuance of the aforesaid documents, a person has to make available number of authentic documents, most of which are documents issued by the Government of India.

37. Learned Authorized Representative of the Department has however submitted that at the time of issuance of IEC, the Director General of Foreign Trade only conducts a limited ten percent physical verification of IEC holders and it is not the policy of the Government to physically verify the address of the IEC holders at the time of issuance of IEC and, therefore, it is the duty of a Customs Broker to verify the address.

38. This contention of the learned Authorized Representative of the Department cannot be accepted. Even if it is assumed that a physical verification is not carried out by the Director General of Foreign Trade before the issuance the IEC, than too it would not mean that it is the Customs Broker who has to carry out a physical verification of the address of the person engaging the Customs Broker, as has been held by the Delhi High Court in **Kunal Traders** and **Shiv Khurana**.

39. Learned Authorised Representative of the Department further submitted that Tribunal in **Millenium Express Cargo Pvt. Ltd. vs. Commissioner of Customs, New Delhi**¹² clearly held that under regulation 13(o) of the 2004 Regulations, a Custom

12. 2017 (346) E. L. T. 471 (Tri.- Del.)

House Agent is obliged to verify the antecedents, correctness of IEC, identity of the importer and functioning of his client at the declared address but the appellant had not even claimed that it had ever verified the existence of the importer at the given address. Thus, the provisions of regulation 13(o) of the 2004 Regulations had not been complied with. In this connection the learned Authorized Representative also pointed out that the appeal filed by **Millennium Express Cargo** before the Delhi High Court was dismissed and the decision is reported in **2017 (354) E.L.T.467 (Del.)**¹³. It is, therefore, the contention that what was held by the Tribunal in **Millennium Express Cargo** should be considered as the law laid down by the Delhi High Court and so the decisions of the Delhi High Court in **Kunal Travels** and **Shiv Khurana** should not be considered to have laid good law.

40. The submission advanced by learned Authorized Representative is mis-conceived. In **Millennium Express Cargo** decided by the Tribunal, another issue that had arisen for consideration was the time line prescribed in regulation 22 of the 2004 Regulations and it is in this context that the Tribunal observed as follows:

"6. The appellant is right in contending that the time line prescribed in Regulation 22 *ibid* have been violated in that present case. However, it is pertinent to note that the appellant had approached the Hon'ble Delhi High Court which vide its order dated 25-2-2015 observed as under:

"This Court is conscious of the fact that inquiry proceedings under Regulation 22 have got prolonged to an extent. The respondents are directed to complete the enquiry proceeding after giving two opportunities to the appellant in accordance with the provisions of Regulations and other provisions of law and pass final order at the earliest preferably within 3 months from today."

13. Millennium Express Cargo Pvt. Ltd. vs. Commissioner of Customs

The appellant had not taken this point of time bar before the High Court and therefore by the doctrine of constructive res judicata is prevented from raising this point in respect of the current proceedings which are in compliance of the direction of the Hon'ble High Court."

41. The appeal filed by **Millennium Express Cargo** before the Delhi High Court was admitted only on this time limit and the following question of law was framed:

"The following question of law arises for consideration:

"Did the CESTAT fell into error in rejecting the appellant's contention that in the circumstances of the case the revocation was not sustainable in law for exceeding the time limit stipulated for commencement of proceeding?"

42. The Delhi High Court found no fault in the order passed by the Tribunal on this issue and the relevant portion of the order of Delhi High Court is reproduced below:

17. The main plank of the submission of the learned counsel for the appellant is that the CESTAT erred in observing that in view of the order dated 25th February, 2015 of this Court, the time limit under Regulation 22 of the CHALR for issuance of an SCN, completing the enquiry and passing the order of revocation stood extended. It is submitted that the time limit of 90 days under Regulation 22(1) of the CHALR is sacrosanct and cannot be extended even by this Court. Further, it was submitted that at the stage when the order was passed by this Court on 25th February, 2015, the issue was one of the suspension of the appellants licence and not its revocation.

18. The Court is unable to agree with the above submission of the leaned counsel for the appellant. The detailed narration of the facts earlier makes it clear that by the time the matter reached this Court at the instance of the appellant by way of Customs Appeal No. 7/2015, the suspension of the appellant's licence already stood confirmed by an order passed by the respondent on 8th October, 2014. In fact, it was that order which was taken up in appeal before the CESTAT along with an application for stay. The CESTAT rejected the stay application on 19th January, 2015 and thereafter Customs Appeal No. 7/2015 was filed before this Court.

19. The question of the Court granting further time to the respondent to again pass another order confirming the suspension of the appellant's licence, therefore, did not arise. In its order dated 25th February, 2015, the Court did not set aside the order dated 19th January, 2015 passed by CESTAT rejecting the stay application of the appellant. In effect, the Court permitted the orders suspending the appellant's licence to continue to operate as such. It is in this context that the direction used in para 2 of the order dated 25th February, 2015 requires to be examined.

20. Regulation 22(1) of the CHALR reads as under:-

“22 Procedure for suspending or revoking licence under Regulation 20. – (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the dated of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

21. It is, therefore, clear that Regulation 20 provides for suspension or revocation of licence and Regulation 22 deals with the procedure there for. At the time when the Court passed its order dated 25th February, 2015 an SCN had already been issued for the revocation of the appellant’s licence. Therefore, this fact was present in the minds of both the counsel for the appellant as well as the respondent and naturally of the Court as well. The only thing that remained to be done was to complete the enquiry pursuant to such SCN. The direction issued obviously related to the enquiry that was required to be undertaken for revocation of the appellant’s licence. It is for that purpose that the Court then granted more time. When it used the words ‘final orders’, it obviously meant the final revocation order. There can be no manner of doubt, therefore, that in para 2 of the order 25th February, 2015, the Court contemplated completion of the enquiry proceedings pursuant to the SCN issued for revocation of the appellant’s licence and nothing else.

22. If the appellant was aggrieved by the order of this Court granting extension of time for completion of the enquiry and passing of the revocation order, the appellant could have further challenged the said order. That, however, was not done by the appellant. In these circumstances, the CESTAT was right in holding that the appellant could not thereafter contend that the time limits under Regulation 22 of the CHALR having been breached. The appellant accepted the orders of this Court extending those time limits.

23. In the circumstances, no fault can be found in the impugned order of the CESTAT.

24. The learned counsel for the appellant then sought to urge that this Court should examine the merits of the order of revocation of the appellant’s licence and whether it was disproportionate and harsh. The Court finds that the scope of the present appeal stands restricted by the sole question of law framed when the appeal was admitted by this Court on 2nd September, 2016. Consequently, no further question arises. The Court is also not inclined at this stage to frame any further question in the appeal.

25. The question framed is accordingly answered in the negative, that is, against the appellant and in favour of respondent by holding that the CESTAT did not err in rejecting the appellant’s contention that in the circumstances of the case the revocation was not sustainable in law by extending the time limit as prescribed under the Regulation. The appeal is accordingly dismissed.”

43. It is, therefore, clear from the aforesaid judgement of the Delhi High Court that the only issue that was examined was as to whether the Tribunal committed an error in rejecting the

contention of the appellant that the revocation of License was not sustainable in law for exceeding the time limit prescribed under the Regulations. There was no occasion for the Delhi High Court to examine the order revocation on the merits since the scope of the appeal was restricted to the sole question of law that had been framed when the appeal was admitted.

44. The Learned Authorized Representative of the Department is, therefore, not justified in contending that the view taken by the Tribunal in **Millennium Express Cargo** should be followed as against the views express by the Delhi High Court in **Kunal Travels** and **Shiv Khurana**.

45. The findings that the appellant had not followed the provisions of Regulations 10(d) and 10(e) of the Licensing Regulations are, therefore, erroneous.

10(n) of the Licensing Regulations

46. Regulation 10(n) requires the Customs Broker to verify the correctness of Importer/Exporter Code Number, Service Tax Identification Number, identity card of the client and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information.

47. The Commissioner, made the following observations in regard to this regulation:

41.3 ***** "From the preceding paras, I find that the CB indulged themselves in the clearance of impugned export consignment without verifying the antecedents of exporter and without verifying the KYC of exporter because the exporter M/s ETPL was a factitious

firm which existed only on paper and its ownership was doubtful too. Sh. Lal Chand Sharma, F-card holder of M/s Transpeed Logistics Private Limited vide his voluntary statement dated 04.09.2018 recorded under Section 108 of the Customs Act, 1962, inter alia stated that they did not verify the address and other antecedents of the said exporting company. Thus, I find that the CB did not verify identity as well as functioning at the given address of his client and violated provisions of Regulation 10(n) of CBLR, 2018 [erstwhile Regulation 11(n) of CBLR, 2013].”

(emphasis supplied)

48. The Delhi High Court in **Shiva Khurana** had an occasion to examine the provisions of Regulation 13(o) of the 2004 Regulations, which Regulation is similar to Regulation 10(n) of the Licensing Regulations, and the relevant observations are as follows :

“7. This court is of the opinion that the impugned order is justified in the facts and circumstances of the case. The reference to the verification of "antecedents and correctness of Importer Exporter Code (IEC) Number" and the identity of the concerned exporter/importer, in the opinion of this Court is to be read in the context of the CHA's duty as a mere agent rather than as a Revenue official who is empowered to investigate and enquire into the veracity of the statement made orally or in a document. If one interprets Regulation 13(o) reasonably in the light of what the CHA is expected to do, in the normal course, the duty cast is merely to satisfy itself as to whether the importer or exporter in fact is reflected in the list of the authorized exporters or importers and possesses the Importer Exporter Code (IEC) Number. As to whether in reality, such exporters in the given case exist or have shifted or are irregular in their dealings in any manner (in relation to the particular transaction of export), can hardly be the subject matter of "due diligence" expected of such agent unless there are any factors which ought to have alerted it to make further inquiry. There is nothing in the Regulations nor in the Customs Act which can cast such a higher responsibility as are sought to be urged by the Revenue. In other words, in the absence of any indication that the CHA concerned was complicit in the facts of a particular case, it cannot ordinarily be held liable.”

49. The basic requirement of Regulation 10 (n) is that the Customs Broker should verify the identity of the client and

functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The finding recorded by the Commissioner that the required documents were not submitted is, therefore, factually incorrect.

50. As noticed above, the KYC documents were submitted by the appellant and the verification was undertaken by Anil, an employee who had made the Directors. The communications with the Encanterra Traders was also done through mail. The self attested Pan Card, Aadhar Card of the Director and Pan Card of the Company had been submitted by letter dated September 10, 2018. A physical verification of the premises, as noticed above, was not necessary to be carried out. The Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulations 10(n) of the 2018 Regulations.

51. The decision of the Tribunal in **HLPL Global Logistics Pvt. Ltd. vs. Commissioner of Customs, (Airport & Admn.), Kolkata¹⁴** would not be applicable in the present case since this decision relates to violation of the provisions section 114 of the Customs Act, 1962 and not the Licensing Regulations. The decision of the Patna High Court in **Bhaskar Logistic Services**

14. 2019 (370) ELT 501 (Tri.-Del)

Pvt. Ltd. vs. Union of India¹⁵ also does not help the Department. The misuse of Importer and Exporter Code had been detected in the case. The decision of the Tribunal in **Multi Wings Clearing & Forwarding P. Ltd. vs. C. C. (General), New Delhi**¹⁶ does not also help the Department as it was found as a fact that the KYC documents were not available with the assessee at the time of visit of the Investigating Agency.

52. Thus, for all the reasons stated above, it is not possible to sustain the order dated July 5, 2019 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed.

(Pronounced in the open Court on February 23, 2021)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

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

Rekha/JB

15. 2016 (340) ELT 17 (Pat.)

16. 2019 (369) ELT 820 (Tri.- Del.)