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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Order reserved on: 21.08.2026*
Order pronounced on: 31.08.2026
Order uploaded on: 01.09.2026

\# **CNR No. DLHC010297032026**

\+ CUSAA 63/2026, CM APPL. 43662/2026, CM APPL. 43663/2026

M/S VOGUE LOGISTICS PVT LTD .....Appellant

Through: Mr. Amit Rawal, Sr. Adv. with Mr. Devesh Tripathi, Mr. Mohd. Faraz Anees, Mr. Mukeshwar Nath Dubey, Mr. Ajay Kumar & Mr. Yash Singh, Advs.

versus

THE COMMISSIONER OF CUSTOMS AIRPORT AND GENERAL .....Respondent

Through: Mr. Vijay Joshi, Sr. Standing counsel with Ms. Katyayani Joshi, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

O R D E R

ANIL KSHETARPAL, J.:

1. Through the present Appeal filed under Section 130 of the Customs Act, 1962 [hereinafter referred to as 'the Act'], the Appellant assails the correctness of the Final Order dated 19.03.2026 [hereinafter referred to as 'Impugned Order'] passed by Principal Bench, Customs, Excise and Service Tax Appellate Tribunal, New Delhi [hereinafter referred to as 'CESTAT'], whereby the CESTAT, while setting aside

the Order-in-Original passed by the Commissioner of Customs (Airport & General) [hereinafter referred to as 'Commissioner'], remanded the matter back to the Commissioner for fresh adjudication in order to grant opportunity to the Appellant to cross-examine the witnesses.

2. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

3. The Appellant, M/s Vogue Logistics Pvt. Ltd., is a Customs Broker holding Customs Broker Licence issued under the Customs Brokers Licensing Regulations, 2018 [hereinafter referred to as 'CBLR']. On 14.12.2021, an investigation was initiated against M/s Disha Enterprises in relation to an alleged attempt to export diamonds concealed in plastic hot fix, pursuant to which the diamonds, stated to be worth approximately Rs.1.56 crores, were seized on 16.12.2021 under Section 110 of the Act.

4. During the course of investigation, statements of persons connected with the Appellant were recorded under Section 108 of the Act. The Appellant's Directors, Shri Moti Khanna and Shri Samir Jha, as well as Shri Pankaj Kumar, an H-Card holder of the Appellant, stated that the Appellant had no knowledge of the alleged concealment of diamonds and that the export documents had been filed on the basis of documents furnished by the exporter. Statements of other persons allegedly involved in the attempted export were also recorded.

5. An Offence Report dated 01.07.2022 was thereafter issued against the Appellant. On the basis thereof, a Show Cause Notice

('SCN') dated 26.09.2022 was issued proposing revocation of the Appellant's Customs Broker Licence for alleged violation of Regulations 10(d), 10(e), 10(m), 10(n), 10(q) and 13(12) of the CBLR. An Inquiry Officer was appointed, before whom the Appellant sought examination of the witnesses whose statements were proposed to be relied upon, including in terms of Section 138B of the Act.

6. The Inquiry Officer, however, submitted his report dated 22.12.2022 without examining the witnesses and relied upon the statements recorded during the investigation. The Appellant thereafter filed its representation against the Inquiry Report and reiterated its request for examination of the relevant witnesses. The Commissioner subsequently passed Order-in-Original dated 14.03.2023, whereby the Appellant's Customs Broker Licence was revoked, the security deposit was forfeited and a penalty of Rs.50,000/- was imposed.

7. Aggrieved by the aforesaid Order-in-Original, the Appellant preferred an appeal before the CESTAT. *Vide* the Impugned Order, the CESTAT held that the Commissioner was not justified in dispensing with the examination of the witnesses and that the statements relied upon could not be relied upon without following the procedure contemplated under Section 138B of the Act. The matter was accordingly remanded to the Commissioner for fresh adjudication, with an opportunity to the Appellant to cross-examine the witnesses.

8. The Appellant, being aggrieved by the aforesaid remand and the directions contained in the Impugned Order, has preferred the present

Appeal.

9. This Court has heard learned senior counsel representing the Appellant and learned SSC representing the Respondent at length and, with their able assistance, perused the paperbook.

10. Learned senior counsel representing the Appellant has drawn the attention of the Court to Section 108 of the Act, which occurs in Chapter XIII dealing with searches, seizure and arrest. He has thereafter referred to Section 138B of the Act, which forms part of Chapter XVI dealing with offences and prosecutions.

11. Learned senior counsel further submits that none of the witnesses whose statements were relied upon were examined by the Inquiry Officer, thereby depriving the Appellant of an opportunity to cross-examine them. He submits that remanding the matter for examination of the witnesses would amount to permitting the Respondents to fill the lacuna in the proceedings, which is impermissible in law. It is further submitted that the revocation proceedings stand vitiated on account of non-compliance with Regulation 17 of the CBLR.

12. Learned SSC representing the Respondent, on the other hand, has supported the Impugned Order and submitted that no interference is warranted by this Court. He submits that the matter has rightly been remanded for fresh adjudication in accordance with law.

13. This Court has considered the submissions advanced by learned senior counsel representing the Appellant and learned SSC

representing the Respondent.

14. Section 108 of the Act only enables a Gazetted Officer of Customs to summon any person whose attendance is considered necessary for giving evidence or producing any document or other thing in an inquiry under the Act. Section 138B of the Act, on the other hand, deals with the relevancy of statements under certain circumstances. The relevant provisions read as under:

> "***108. Power to summon persons to give evidence and produce documents.***—*[(1) Any Gazetted Officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]*
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> *(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*
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> *(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:*
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> *Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.*
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> *(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).*
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> ***SECTION 138B. Relevancy of statements under certain circumstances.*** *- (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -*
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> > *(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or*

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice."

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

15. For regulating Customs Brokers' Licences, the CBLR have been notified. Regulation 17 of the CBLR reads as under:

"***17. Procedure for revoking license or imposing penalty.-*** *(1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of

Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(8) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

Provided that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(9) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder:

Provided that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.

nst a Provided further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Explanation. Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."

16. It is evident from Regulation 17(3) and (4) of the CBLR that the Inquiry Officer is required to consider such documentary and oral evidence as may be relevant or material to the inquiry. The Customs Broker is entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings. However, the Inquiry Officer may decline permission to examine any person only where the evidence is considered irrelevant or immaterial, and in such a case, reasons are required to be recorded in writing.

17. In the present case, the Inquiry Officer did not examine any of the witnesses whose statements had been relied upon. Instead, reliance was placed upon the statements recorded during the course of investigation by the Customs Authorities, and the Inquiry Report was submitted on that basis after affording an opportunity of hearing to the Appellant. The CESTAT found that the procedure so adopted was not appropriate and that the Appellant should have been afforded an opportunity to cross-examine the witnesses whose statements were relied upon.

18. In the considered view of this Court, Section 108 of the Act empowers the concerned officer to summon a person to give evidence

or produce documents or other things in an inquiry under the Act. Section 138B, on the other hand, deals with the relevancy of statements in the circumstances specified therein and, in its statutory setting, principally concerns proceedings relating to offences and prosecutions. The present proceedings are not proceedings for prosecution of the Appellant for an offence.

19. At the same time, Regulation 17(3) of the CBLR expressly requires the Inquiry Officer to take such oral evidence as may be relevant or material to the inquiry, while Regulation 17(4) confers upon the Customs Broker the right to cross-examine the persons examined in support of the grounds forming the basis of the proceedings. Consequently, where oral evidence is sought to be relied upon in the inquiry, the Customs Broker must be afforded the corresponding opportunity of cross-examination. The procedure contemplated under Regulation 17 bears some resemblance to a domestic disciplinary inquiry. However, this does not mean that all principles governing a domestic inquiry between an employer and an employee are to be imported into proceedings under the CBLR. The requirement of affording an opportunity of cross-examination flows specifically from Regulation 17(4), which could not have been overlooked by the Commissioner.

20. The further contention that the remand directed by the CESTAT amounts to permitting the Department to fill a lacuna also cannot be accepted. The remand is founded upon a procedural infirmity in the inquiry, which was noticed by the CESTAT and was not addressed by the Commissioner. No provision has been brought to the notice of this

Court which prohibits the CESTAT from remanding a matter for fresh adjudication in proceedings arising under the CBLR.

21. The last contention of learned senior counsel representing the Appellant, to the effect that once there is an error in following the procedure prescribed under Regulation 17 of the CBLR, the benefit thereof must necessarily be given to the Appellant/Customs Broker, also lacks merit. An error in following the prescribed procedure does not necessarily entail setting aside the order passed by the Commissioner altogether, particularly where such procedural error can be rectified by granting an opportunity to the Customs Broker. This Court is not expected to altogether set aside the proceedings initiated against the Customs Broker for the alleged misconduct arising from the alleged failure to comply with the mandate of Regulation 10 of the CBLR.

22. Keeping in view the aforesaid discussion, the present Appeal is dismissed. The pending applications also stand closed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 31, 2026
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