

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

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 51139 OF 2020

(Arising out of Order-in-Original No. 81/MK/POLICY/2020 dated 30.09.2020 passed by the Commissioner of Customs (Airport & General), New Delhi)

M/s HLPL Global Logistics Pvt. Ltd.

...Appellant

2151/3D, New Patel Nagar, Opp.
Shadipur Depot NEW DELHI – 110 008

versus

**Commissioner of Customs
(Airport & General)**

...Respondent

New Customs House, Near IGI
Airport New Delhi – 110 037

APPEARANCE:

Shri Devesh Tripathi, Advocate for the Appellant
Shri Nagendra Yadav, Authorised Representative of the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: 29.08.2022

Date of Decision: 06.09.2022

FINAL ORDER No. 50817/2022

JUSTICE DILIP GUPTA:

This appeal has been filed by M/s. HLPL Global Logistics¹ to assail the order dated 30.09.2020 passed by Commissioner of Customs (Airport & General)² by which the Customs Broker License of the appellant has been revoked by exercising powers under regulation 14 of the Customs Broker Licensing Regulations, 2018³ for the reason that the appellant had connived with Kultar Singh and abetted illegal withdrawal of Duty Drawback by filing export documents on behalf of

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- 1. the appellant**
 - 2. the Commissioner**
 - 3. the 2018 Regulations**

six non-existent firms, thereby knowingly aiding the export of overvalued 'Floor Coverings'.

2. The facts reveal that in the year 2014, the Directorate of Revenue Intelligence⁴ initiated investigation against 21 exporters who were exporting man-made floor coverings and were claiming duty drawback under Focus Product Scheme by allegedly resorting to over valuation and misdeclaration.

3. On 18.11.2014 DRI officers recorded the statement of Ashok Sharma, Director of appellant wherein he categorically mentioned that the export consignments had been handled only after collecting documents as per Know Your Customer⁵ norms. Goods of M/s. Kanak Fashion lying at ICD Loni and CFS Mundra were examined. During examination samples were drawn and it was observed that floor covering was machine made and not handmade. Goods of M/s. Dwarka Trading lying at ICD PPG were also examined and during examination samples were drawn and it was observed that floor covering was machine made and not handmade.

4. On 29.12.2014 summons were issued to Ashok Sharma, Director of the appellant but in reponse Prakash Chand Sharma, who is a director of M/s. Him Logistics Pvt. Ltd., appeared and his statement was recorded.

5. On 16.02.2015 an offense report was forwarded to Commissioner of Customs by DRI and on 24.02.2015 the license of the appellant was suspended. The suspension was confirmed on 23.03.2015.

4. the DRI
5. KYC

6. Two show cause notices dated 24.09.2015 and 19.09.2015 were issued under the Customs Act, 1962 to several exporters out of the 21 (including Kanak and Dwarka) against whom investigation was initiated as also the appellant. So far as the appellant is concerned, the notice proposed penalty for allegedly filing shipping bills on behalf of non-existent firms.

7. The Department, considering the above said show cause notices as an offense report issued three show cause notices, all dated 02.02.2016, under Customs Broker Licensing Regulations, 2013⁶ proposing revocation of the Customs Broker License of the appellant.

8. These show cause notices were challenged before the Delhi High Court in several writ petitions and the Delhi High Court, by judgement dated 24.05.2016, quashed the show cause notices on the ground that the offense report is actually the letter dated 16.02.2015 sent by DRI and not the show cause notices dated 24.09.2015 or 19.09.2015. Thus, as all the three show cause notices proposing revocation of the licenses were issued beyond the mandatory period of 90 days, they were found to be not sustainable in law. The relevant portion of the said judgment of the Delhi High Court in **HLPL Global Logistics P. Ltd. vs. Commissioner of Customs (General)**⁷ is reproduced below:

"These four writ petitions by HLPL Global Logistics Pvt. Ltd. challenge four separate orders of suspension, three of them dated 24th February, 2015 and one dated 2nd May, 2016 passed by the Commissioner of Customs (General) in exercise of the powers conferred under Regulation 19(1) of the Customs Brokers Licensing Regulations, 2013 ('CBLR,

6. the 2013 Regulations
7. 2016 (338) E.L.T. 365 (Del.)

2013').

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3. As far as W.P. (C) Nos. 1734, 2134 and 2135 of 2016 are concerned, an offence report dated 16th February, 2015 was received from the Directorate of Revenue Intelligence ('DRI') by the customs authorities on 18th February, 2015 wherein nine CBs were found to have violated Regulation 11 of CBLR, 2013. One of the nine CBs mentioned therein was the petitioner.

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9. **On 2nd February, 2016, the impugned SCN was issued to the petitioner under Regulation 20 of the CBLR, 2013,** requiring the petitioner to show cause as to why the petitioner's CB license should not be revoked and security forfeited for failure to comply with Regulation 11 of CBLR, 2013 and be asked to pay penalty under Regulation 22 read with Regulation 20 of the CBLR, 2013.

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12. **It bears reiteration that in terms of Regulation 20(1) of the CBLR, 2013, the SCN had to be issued to the petitioner within ninety days from the date of the receipt of the offence report, i.e., within 90 days from 18th February, 2015.** Clearly the SCN under Regulation 20(1) of the CBLR, 2013 was not issued within ninety days after 18th February, 2015.

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14. **Consequently, the Court is satisfied that as far as the W.P. (C) Nos. 1734, 2134 and 2135 of 2016 are concerned, the petitioner not having been issued the SCN within ninety days of receipt of the offence report by the Customs, the SCN dated 2nd February, 2016 issued to it by the Commissioner of Customs (General) is clearly unsustainable in law.** The order dated 23rd March, 2015 confirming the suspension of the petitioner's CB licence cannot also be continued on account of the failure to issue the SCN and therefore, complete the enquiry within the time limit specified in Regulation 20. Consequently the said order dated 23rd March, 2015 is hereby declared to be invalid and set aside on that

basis.

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20. **The suspension order dated 2nd May, 2016 is hereby set aside.** However, this will not prevent the respondents from issuing a fresh SCN to the petitioner provided it is in compliance with Regulations 19 and 20 of the CBLR, 2013.”

(emphasis supplied)

9. The department issued another show cause notice dated 22.10.2019 under the Customs Act proposing penalty on the appellant for the past exports against the same exporters.

10. The department, thereafter, issued a show cause notice dated 24.01.2020 under the provisions of the Customs Broker Licensing Regulations, 2018⁸ proposing to revoke the license of the appellant considering the show cause notice dated 22.10.2019 as the offense report. An inquiry officer was appointed and the inquiry report dated 30.06.2020 was forwarded to the appellant. A reply was submitted by the appellant. Thereafter, the impugned order dated 30.09.2020 was passed.

11. Shri Devesh Tripathi learned counsel for the appellant made the following submissions:

- (i) The department committed an error in considering the show cause notice dated 22.10.2019 as the offense report instead of letter dated 16.02.2015 sent by DRI;
- (ii) The appellant had filed only one Shipping Bill No. 5199084 dated 25.09.2014 in respect of M/s. Dwarka Trading Company and said the Shipping Bill was considered under the show cause notice dated 02.02.2016 which was ultimately quashed by the Delhi High Court;

8. the 2018 Regulations

- (iii)** As no other Shipping Bill had been filed by the appellant, the appellant cannot be treated as Customs House Agent. Hence, in respect of Shipping Bills, other than those pertaining to M/s. Dwarka Trading Company (which has already been set aside by the Delhi High Court), the appellant cannot be charged for violation of CBLR; and
- (iv)** The appellant was denied an opportunity to cross examine the witnesses whose statements were relied upon to confirm the revocation of the license when it is mandatory under regulation 17(4) of CBLR, 2018 (erstwhile regulation 20(4) of CBLR, 2013) to give an opportunity to customs broker to cross examine the persons examined in support of the grounds forming the basis of proceedings.

12. Shri Nagendra Yadav, learned authorised representative appearing for the department, however, made the following submissions:

- (i)** The offence report was received on 31.10.2019 and the show cause notice was issued on 24.01.2020 which is well within the time limit as prescribed in regulation 17(1) of the 2018 Regulations;
- (ii)** In the instant case, the consignments were cleared by the appellant having a very significant and active role in the entire operation;
- (iii)** Despite knowing that **Kultar Singh** had used dummy firms for export of overvalued goods, the appellant did not obtain authorization for the firms from the actual IEC holders of these firms. Therefore, the appellant failed to comply with regulation 10(a) of the 2018 Regulations;

(iv) Kultar Singh was the key person dealing with the Customs Brokers for all the customs clearing work of the dummy firms and was involved in modus operandi to avail undue and inadmissible benefit of drawback and the said fact was known to the appellant; and

(v) The appellant in connivance with **Kultar Singh** wilfully and intentionally did not ascertain the correct value and description of the goods by asking the exporter to present the invoice mentioning the correct value and facilitated the export of the consignments for monetary consideration and caused huge loss. Thus, the appellant violated regulation 10(e) of the 2018 Regulations.

13. The submissions advanced by the learned counsel for the appellant and the learned authorized representatives appearing for the Department have been considered.

14. The records indicate that earlier the license of the appellant was suspended on 24.02.2015, which order was confirmed on 23.03.2015. This suspension order was challenged by the appellant before the Delhi High Court on the ground that though the offence report was submitted on 16.02.2015, the show cause notice was issued on 24.09.2015 much beyond the statutory period of ninety days contemplated under regulation 20(1) of the 2013 Regulations. The Delhi High Court held that since the show cause notice was not issued within the ninety days from the date of offence report i.e. 18.02.2015 it was not sustainable in law. The Delhi High Court, therefore, set aside the suspension order dated 24.02.2015 as confirmed on 23.03.2015.

15. Subsequently, the department issue another show cause notice dated 22.10.2019 proposing penalty for the past exports against the same exporters. The appellant alleges that the show cause notice dated 22.10.2019 was issued on the basis of the earlier investigation carried out against 21 non-existent exporters for availing ineligible duty drawback and the report of said offense had earlier been forwarded by a letter dated 16.02.2015.

16. A show cause notice dated 24.01.2020 was then issued to the appellant proposing to revoke the Customs Broker License of the appellant by considering the show cause notice dated 22.10.2019 issued under the provisions of the Customs Act as the offence report.

17. The appellant contends that since the show cause notice dated 22.10.2019 that was issued under the Customs Act was primarily based on the investigation earlier carried out and arises out of the same offence report dated 16.02.2015, the present show cause notice dated 24.01.2020 is beyond ninety days and, therefore, the proceedings initiated against the appellant culminating in the revocation order dated 30.09.2020 would be without authority of law.

18. There is considerable force in the submission advanced by the learned counsel for the appellant.

19. The Department clearly committed an error in initiating proceedings for revocation of the Customs Broker License of the appellant by issuing the show cause notice dated 24.01.2020 treating the show cause notice dated 22.10.2019 as the offence report. The show cause notice dated 24.01.2020 proceeding to revoke the license of the appellant could not have treated the show cause notice dated

22.10.2019 as the offence report because the said show cause notice dated 22.10.2019 arises out of the offence report dated 16.02.2015.

20. It is also not disputed by the respondent that the appellant had filed only one Shipping Bill No. 5199084 dated 25.09.2014 in respect of M/s. Dwarka Trading Company and this Shipping Bill was considered in the earlier show cause notice dated 02.02.2016, which had been quashed by the Delhi High Court. No other Shipping Bill was submitted by the appellant and indeed none has been pointed out by the department.

21. The impugned order dated 30.09.2022 passed by the Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **06.09.2022**)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

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