

\$~57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 02.02.2023*

+ **W.P.(C) 505/2021 and CM No. 1317/2021**

M/S HIM LOGISTICS PVT. LTD. Petitioner
Through: Mohd. Faraz Anees, Advocate.

versus

COMMISSIONER OF CUSTOMS
(AIRPORT & GENERAL) Respondent
Through: Mr Harpreet Singh, Senior
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 31.12.2020 (Order-in-Original No.126/Mk/Policy/2020 – hereafter ‘the impugned order’) passed by the respondent revoking the petitioner’s Customs Broker License (CB License No. R-07/2004), which was otherwise valid up to 10.10.2028. In addition, the respondent had also directed forfeiture of the security deposit by the petitioner and levied a penalty of ₹50,000/- on the petitioner.

2. The petitioner claims that the said order is without jurisdiction and has been issued beyond the period of ninety days from the receipt

of the Offence Report, which – according to the petitioner – was received on 16.02.2015. The petitioner also contends that the impugned order was passed on an erroneous premise that the petitioner has acted as a Customs Broker in respect of the exports under certain shipping bills. The petitioner had disputed the same and had succeeded before the Customs Excise and Service Tax Appellate Tribunal (hereafter ‘the Tribunal’) in an earlier round of proceedings [titled *Him Logistics Pvt. Ltd. v. Commissioner of Customs, New Delhi: 2015 (325) E.L.T. 793 (Tri-Del)*].

3. In the earlier round of proceedings emanating from an order suspending the petitioner’s CB license, the learned Tribunal had found that the petitioner was not engaged as a Customs Broker by the offending exporters and therefore, the question of violation of Customs Brokers Licensing Regulations, 2013 did not arise.

4. Mr. Kumar, learned counsel appearing for the respondent, did not contest the above contention. He also does not dispute the facts stated in the petition. He, however, contended that the petitioner has an alternative remedy of an appeal before the Tribunal and the petitioner ought to be relegated to availing alternate remedies.

5. It is apparent that the issues involved in the present petition have been considered by the concerned authorities and have been subject matter of proceedings before the learned Tribunal in appeals filed by the petitioner as well as another company, HLPL Logistics Pvt. Ltd. Although the findings of learned CESTAT in the earlier round have not been challenged, the respondent has passed the impugned order in

complete disregard of the same. In the given circumstances, considering that the petitioner's relief is not predicated on any fact which is disputed by the respondent, we do not consider it apposite that the appellant be relegated to approach the learned Tribunal

6. It would be apposite to briefly, refer to the context in which the present controversy arises. The petitioner is the holder of the Customs Broker License No. 7/2004, which was issued initially under Regulation 9(1) of Customs House Agents Licensing Regulations, 2004 (hereafter 'CHALR 2004'). The impugned order proceeds on the basis that an Offence Report in the form of Show Cause Notice dated 22.10.2019 was issued by the Additional Commissioner of Customs (Import), ICD, TKD, New Delhi, which was received in the office of the respondent on 31.10.2019. It is alleged that certain exporters had exported goods described as Floor Covering (Braided) of Man-Made Fiber and had claimed Duty Drawback and the benefit of Focus Product Scheme by resorting to mis-declaration of description of the goods as well as their value.

7. It is stated that intelligence was gathered in regard to such exports and was shared with the office of the Commissioner of Customs, ICD, TKD. The Commissioner of Customs, ICD, TKD had requested the Directorate of Revenue Intelligence to take over the investigations. Thereafter, investigations were initiated by the Directorate of Revenue Intelligence – DRI (Hqrs.) in respect of the alleged misdeclarations.

8. The Officers of Directorate of Revenue Intelligence (DRI) undertook investigations relating to exports of floor coverings by 21

exporters under 266 shipping bills. It is alleged that the investigations revealed that there were mis-declarations and were highly overvalued to illegally avail the benefits of duty drawback and focus product scheme. It was also alleged that investigations revealed that several exporters were non-existent and therefore, Import-Export (IE) Codes were obtained by misusing the identity of persons who were not exporters. It is stated that goods lying at different ports, which were in the process of being exported including by M/s Kanak Fashion and M/s Dwarka Trading Company were examined and samples were drawn. Statements of various persons including Director and employees of the petitioner were recorded under Section 108 of the Customs Act, 1962.

9. The investigation was also extended to the Customs Brokers. Mr Prakash Sharma, Director of the petitioner was also asked to join the inquiry and his statement was recorded.

10. It was alleged that the petitioner had violated Regulations 11(a), 11(d), 11(j), 11(m) and 11 (n) of Customs Brokers Licensing Regulations, 2013 (CBLR, 2013). Two Directors of the petitioner company were also Directors of another company M/s HLPL Global Logistics Pvt. Ltd. Further, the addresses of the petitioner and HLPL Global Logistics Pvt. Ltd. was the same. In the given circumstances, the Custom Broking License of the petitioner as well as HLPL Global Logistics Pvt. Ltd. were suspended. The suspension was confirmed by the Commissioner of Customs.

11. The petitioner appealed the order suspending its CB License before the learned Tribunal. The petitioner contended that the identities

of the two companies (petitioner and HLPL Global Logistics Pvt. Ltd.) were different and Mr. Prakash Sharma was not a Director in HLPL Global Logistics Pvt. Ltd. The petitioner also asserted that it had not filed any shipping bill in respect of the exports in question and was not the Customs Broker in respect of any of the shipments covered under the shipping bills in question (266 in number). The learned Tribunal examined the facts of the case and concluded that the petitioner was not the Customs Broker in respect of the exports; however, HLPL Global Logistics Pvt. Ltd. was the Customs Broker in respect of some of the exports in question. The learned Tribunal also held that the identity of Mr Prakash Sharma, who had allegedly abetted the offence, is separate from that of the petitioner company and, therefore, his acts of omission and commission in respect of the exports may invite actions under the Customs Act, 1962 against him but not the petitioner company. The learned Tribunal concluded that the “*the appellant [petitioner herein] was not engaged by any of the exporters to deal with the export of the impugned goods and therefore the question of violation of any of the above-quoted provisions of CHALR [sic CBLR-2013] by the appellant simply does not arise.*” The learned Tribunal, accordingly, held that the grounds on which the petitioner’s license was suspended were unsustainable. Admittedly, the findings of the learned Tribunal in ***Him Logistics Pvt. Ltd. v. Commissioner of Customs, New Delhi*** (*supra*) were not challenged.

12. According to the petitioner, one Air Cargo Impex had acted as a Customs Broker for the exports mentioned in the impugned order. It is claimed that neither the petitioner nor HLPL Global Logistics Pvt. Ltd.

has acted as a Customs Broker in respect of the shipments in question and therefore, their license cannot be revoked for violations of any of the obligations of a Customs Broker under the Customs Brokers Licensing Regulations, 2013 or Customs Brokers Licensing Regulations, 2018. However, the respondent had proceeded to pass an order revoking the license of M/s HLPL Global Logistics Pvt. Ltd. and thus, in any event respondent could not simultaneously revoke the petitioner's license on the same ground. It is also claimed that the action of revocation of license was barred by limitation as DRI has forwarded the Offence Report dated 16.02.2015 to the Commissioner of Customs (General), New Custom House proposing revocation of CB License of the petitioner as well as M/s HLPL Global Logistics Pvt. Ltd. Following the said Offence Report, the petitioner's license was suspended by an order dated 20.03.2015, which was further confirmed by the order dated 10.04.2015.

13. After culmination of the investigations, the Joint Commissioner of Customs issued three Show Cause Notices: two of the Show Cause Notices dated 24.09.2015 and the third dated 19.09.2015. It is stated that the said Show Cause Notices were adjudicated and Orders-in-Original dated 25.08.2018, 04.05.2018 and 03.08.2018 were passed. In terms of the said orders, penalty was imposed *inter alia* on the Director of the petitioner company for aiding the Customs Broker, M/s HLPL Global Logistics Pvt. Ltd. but no penalty was imposed on the petitioner company.

14. The respondent considered the afore-mentioned Show Cause

Notices (Show Cause Notices dated 24.09.2015 and 19.09.2015) as an Offence Report and initiated proceedings for revoking the CB License of M/s HLPL Global Logistics Pvt. Ltd. and three Show Cause Notices, all dated 02.02.2016, were issued.

15. M/s HLPL Global Logistics Pvt. Ltd. challenged the Show Cause Notices dated 02.02.2016 by filing the writ petitions in this Court. The said petitions were allowed by this Court by a judgment dated 24.05.2016 [titled *HLPL Global Logistics Pvt. Ltd. v. Commissioner of Customs (General): 2016 (338) E.L.T. 365 (Del.)*]. The Court held that Show Cause Notices dated 02.02.2016 were not issued within the period of ninety days from the date of the Offence Report, which was received on 18.02.2015.

16. On 24.01.2020, the respondent issued a Show Cause Notice calling upon the petitioner to show cause why the CB License be not revoked. A similar Show Cause Notice was also issued to M/s HLPL Global Logistics Pvt. Ltd. The said Show Cause Notice was issued treating a Show Cause Notice dated 22.10.2019 as an Offence Report. The said Show Cause Notice was issued on the basis of investigation carried out in respect of certain exporters who alleged to be non-existent but had availed duty drawback and benefits of focus products scheme.

17. Undisputedly, the Offence Report in respect of the said offence had been forwarded by DRI to the respondent by a letter dated 16.02.2015.

18. Pursuant to the Show Cause Notice dated 24.01.2020, issued to M/s HLPL Global Logistics Pvt. Ltd., the respondent passed an order

dated 30.09.2020 revoking the CB License of M/s HLPL Global Logistics Pvt. Ltd. Undisputedly, the allegations made in the Show Cause Notices dated 24.01.2020 issued to the petitioner and M/s HLPL Global Logistics Pvt. Ltd. were similar.

19. M/s HLPL Global Logistics Pvt. Ltd. had challenged the order dated 30.09.2020 revoking its license before the learned Tribunal (*Customs Appeal No. 51139/2020* captioned *M/s HLPL Global Logistics Pvt. Ltd. v. Commissioner of Customs*). The said appeal was allowed by an order dated 06.09.2022. The learned Tribunal found that the Show Cause Notice dated 22.10.2019 could not be treated as an Offence Report because the said Show Cause Notice arises out of the Offence Report dated 16.02.2015. The operative part of the said decision reads as under:

“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.”

20. In the present case as well, the Show Cause Notice dated 24.01.2020 issued to the petitioner is, clearly, erroneous as it proceeds on the basis that the Show Cause Notice dated 22.10.2019 is the Offence Report.

21. Mr. Kumar, the learned counsel for the respondent does not dispute that the Show Cause Notice dated 22.10.2019 is in respect of the same offence as the subject matter of the Offence Report dated 16.02.2015. It is apparent that the proceedings for revocation of the petitioner’s license were commenced beyond the period of ninety days from the date of the Offence Report.

22. Regulation 17 of the Customs Brokers Licensing Regulations 2018 provides for the procedure for revoking CB License. In terms of Regulation 17(1) of the said regulations – which is also similarly worded as Regulation 20(1) of the Customs Brokers Licensing Regulations, 2013 – the procedure for revocation of license is required to be triggered by issuance of a notice to the Customs Broker within a period of *ninety* days from receipt of the Offence Report. Regulation 17(1) is set out below:

“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.”

23. Since the notice in this case, was issued beyond the period of ninety days from the Offence Report, the impugned order cannot be sustained.

24. It is also not disputed that the petitioner has not acted as a Customs Broker in respect of exports under the offending Shipping Bills.

25. In view of the above, the petition is allowed and the impugned order is set aside.

26. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 2, 2023
RK