REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 15/09/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52836/2015-CU[DB]** dated **11/09/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4)** of the **Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/51709/2015	**Him Logistics Pvt Ltd** (through Its Director- Prakash Chand Sharma) 2151/3d, New Patel Nagar NEW DELHI
		Name and Address of Respondent
2		C.C.-New Delhi New Customs House,Near I.G.I. Airport, New Delhi,

Copy To

3 Advocate(s) / Consultant(s):

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP) JANGPURA , NEW DELHI-110014
I.P. EXTENSION, PATPARGANJ-DELHI

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing: 02.07.2015

Date of Decision: 11.9.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/51709/2015-CU[DB]

[Arising out of Order-in-Original No.54/NK/POLICY/2015, dated 10.04.2015 passed by the C.C., New Delhi]

M/s. Him Logistics Pvt. Ltd. — Appellant

Vs.

C.C., New Delhi — Respondent

Appearance
Shri S. Ganesh, Sr. Advocate
Shri Priyadarshi Manish, Advocate
Ms. Anjali Manish, Advocate - for the appellant

Mr. Amresh Jain, DR - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 52836/2015, **dated 11.09.2015**

Per Mr. R.K. Singh :

The appeal has been filed against Order-in-Original dated 10.04.2015 in terms of which Commissioner of Customs, New Delhi nder Rule 19(2) of the Customs Broker Licencing Regulations, 2013 (CBLR, 2013) confirmed the suspension of the appellant's customs brokers licence No.7/2004, which was suspended vide order dated 20.03.2015.

2. The facts of the case briefly stated are as under:-

Directorate of Revenue Intelligence (DRI) undertook investigation relating to exports of floor coverings by 21 exporters under nearly 266 shipping bills. The investigation revealed that the goods were not only mis-declared but were also highly over-valued to avail of undue benefits of Duty Draw Back and Focus Product Schemes. Investigation further revealed that several exporters were non-existent and the Import Export (IE) codes were obtained using identity of persons who were not actually exporters. Investigation into the role of customs brokers was also undertaken and DRI informed the Commissioner of Customs that Mr. Prakash Sharma, Director of Him Logistics Pvt. Ltd. (HLPL) met all the exporters who had accompanied the middleman Mr. Amit Arora and one of the exporters also stated that Mr. Prakash Sharma determined the classification of the goods which was found to be incorrect. The investigation also revealed that employees of the appellant were handling clearance of the impugned export consignments at ICD, Patpatganj and these employees also had a role in manipulation of the market enquiry to ascertain market value thereof. Mr. Prakash Sharma, Director of the appellant in his statement admitted that he had not verified antecedents of any of the exporters and had not met the proprietors/directors of the exporting firms. He also admitted that the bills for clearance of shipping bills were raised by HLPL and the payments were received in HLPL's account. The appellant (HLPL) was charged with the violation of Regulations 11 (a), 11(d), 11(J), 11(m) and 11(n) of CBLR, 2013. The Commissioner of Customs after taking into account the evidence on record and having regard to the fact that two of the directors of HLPL, were also directors in M/s. HLPL Global Logistics Pvt. Ltd., the payments had been received by the appellant in respect of some of the clearances made by the exporting firms, that the addresses of HLPL and HLPL Global Logistics Pvt. Ltd. were the same and during investigation Mr. Prakash Sharma appeared as a co-ordinator of the group companies (HLPL and HLPL Global Logistics Pvt. Ltd.), held that *prima facie* Mr. Prakash Sharma was the mastermind in the case and therefore liable for action under Rule 19(2) of CBLR, 2013 for his misconduct. Accordingly, vide the impugned order, he confirmed suspension of customs broker licence of the appellant.

3. Ld. Advocate for the appellant contended that (i) M/s. HLPL (the appellant) and M/s. HLPL Global Logistics Pvt. Ltd. are two different legal persons and Mr. Prakash Sharma is not a director in HLPL Global Logistics Pvt. Ltd.. (ii) Appellant did not file any shipping bill at all in respect of the impugned exports. (iii) It was not the customs broker in respect of any of the impugned exports and therefore question of violation of CBLR, 2013 by the appellant does not arise. (iv) No payment was received by the appellant in respect of the exports which were investigated. (v) Being a sister concern of HLPL Global Logistics Pvt. Ltd. is no ground to suspend appellant's licence for any wrong

doing by HLPL Global Logistics Pvt. Ltd. and the Commissioner has not given any ground as to how the two are sister concerns and what is meant by sister concern. (vi) It is irrelevant that two of the Directors of M/s. HLPL Global Logistics Pvt. Ltd. are also the directors of the appellant. (vii) Operating from the same address as that of M/s. HLPL Global Logistics Pvt. Ltd. is of no consequence as each company is a separate legal person. (vii) Shri Prakash Sharma is not the customs broker and therefore his misconduct cannot be a ground for suspension of licence of the appellant. (viii) The timelines prescribed under CBEC Circular No.9/2010-Cus, dated 08.04.2010 have not been adhered to. The appellant referred to Calcutta High Court judgement in the case of ***NC Singha & Sons Vs. Union of India [1998 (104) ELT 11 (Cal.)]*** to advance the proposition that in the absence of spelling out any immediate action required to be taken, suspension is not warranted. He further referred to Madras High Court judgement in the case of ***East West Freight Carrier P. Ltd. Vs. Collector [1995 (77) ELT 79 (Mad.)]*** for the proposition that suspension of the licence is to be resorted to only where immediate action is considered necessary.

4. Ld. Departmental Representative, on the other hand, stated that Shri Prakash Sharma was the master mind in this case and the payments from several of the exporters were received by the appellant and therefore the appellant was certainly guilty of misconduct as per CBLR, 2013. He also stated that the common directors of the appellant and M/s. HLPL Global Logistics Pvt. Ltd. live at the same address and operate from the same premises which shows they are in collusion with each other.

5. We have considered the contentions of both sides and perused the records. At the very outset it is pertinent to mention that the custom broker in respect of the impugned exports was HLPL Global Logistics Pvt. Ltd. The appellant and M/s. HLPL Global Logistics Pvt. Ltd. are two distinct legal persons. Supreme Court in the case of ***Indowind Energy Ltd. Vs. Wescare (India) Ltd. & Another [2010 (5) SCC 366]*** has held as under:-

> *"17. ......Each company is separate and distinct legal entity and the mere fact that the two companies have common shareholders or common Board of Directors, will not make the two companies a single entity. Nor will the existence of common shareholders or Directors lead to an inference that one company will be bound by the acts of the other."*

As contended by the appellant, we find that the appellant had not filed any shipping bills in respect of the impugned goods, which were found to be mis-declared and overvalued and it was not the customs broker in respect of the said goods. Therefore, the question of violation of Regulation 11 (a), 11(d), 11(J), 11(m) and 11(n) of CBLR, 2013 by the appellant simply would not arise but we shall revert to it for a more detailed analysis a little later.

6. As regards evidence relied upon by the original adjudicating authority to the effect that Shri Prakash Sharma was guilty of abetment, it has to be noted that Mr. Prakash Sharma is a legal person different from the appellant and therefore the acts of omission or commission of Mr. Prakash Sharma with regard to the impugned goods would invite action against him under the Customs Act, 1962 and not against the appellant. The observation in the impugned order that the employees of

the appellant attended to the clearance of the impugned goods and manipulated the market enquiry in respect of certain consignments suffers from grave infirmity in-as-much-as when the appellant was not the custom broker for the impugned goods, its employees had no legal authority to handle the export of the impugned goods; and indeed the customs should not have allowed them to handle the impugned goods because that they were not employees of the customs broker in respect of the impugned goods. It comes out from the impugned order that Commissioner of Customs has blurred the distinction between Mr. Prakash Sharma and the appellant and disregarded the facts that these two are different legal persons. Similarly, it is also pertinent to mention that even if M/s. HLPL Global Logistics Pvt. Ltd. and the appellant are "sister concerns" (whatever that means) on account of the fact that two of their directors are common and operate from the same premises, it is not legally permissible to hold the appellant liable for the wrongdoings of M/s. HLPL Global Logistics Pvt. Ltd.

7. CBEC vide its circular No.9/2010-Cus, dated 08.04.2010 has prescribed certain timelines relating to suspension of customs brokers licence. Para 7.2 of the said circular prescribing the time-lines in this regard is reproduced below:-

> *"7.2 In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional' hearing should be given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under*

Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing Authority), within thirty days of the detection of an offence. The Licensing Authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him."

It is seen that after the receipt of the report dated 05.03.2015 from DRI, the licence was suspended on 20.03.2015, hearing was granted on 01.04.2015 and the suspension was confirmed vide order dated 10.04.2015 and thus contrary to the contention of the appellant, the timelines indicated by Board have been adhered to by Commissioner in this case.

The judgements in the cases of ***NC Singha & Sons Vs. Union of India*** (supra) and ***East West Freight Carrier P. Ltd. Vs. Collector*** (Supra) are also not of much avail to the appellant because from the perusal the impugned order, it cannot be said that the Commissioner has not applied his mind or has not spelt out the circumstances which in its (i.e., Commissioner's) view warranted confirmation of suspension.

8. In the present case, the suspension was ordered and confirmed on the ground that the appellant had violated the provisions of Regulations 11 (a), 11(d), 11(J), 11(m) and 11(n) of CBLR, 2013. These provisions are reproduced below-

"11. 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 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;

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Commissioner of Customs;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

Perusal of the above quoted provisions makes it evident that these cast certain duties and responsibilities on a customs broker who has been engaged by an exporter or importer as a customs broker to deal with the import or export of goods. As has been stated earlier, the appellant 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 by the appellant simply does not arise. Thus, the ground on which the suspension of licence was confirmed is totally unsustainable.

9. While the appellant has denied receipt of any payments in respect of the clearances of the impugned goods, we find that some of the exporters of the impugned goods had dealings with the appellant in-as-much-as certain ledger accounts of the appellant show debit and credit entries in the name of some such exporters but that by itself would not make the appellant guilty of violation of CBLR, 2013, when it has already held above that in the present case CBLR, 2013 could not have been violated by the appellant when it was not the customs broker in relation to the impugned goods.

10. In the light of the above analysis we set aside the impugned order.

(Pronounced in the Open Court on 11.9.2015)

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK