

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. I

Customs Appeal No. 50231 of 2024

[Arising out of Order-in-original No. 76/ZR/Policy/2023 dated 30.10.2023 passed by the Commissioner of Principal Commissioner of Customs (Airport & General), New Delhi]

Global Links

105, Bhanot Cornor,
Pamposh Enclave, Greater Kailash-I,
New Delhi-110048

Appellant

Versus

**Principal Commissioner of Customs
(Airport & General, New Delhi)**

New Customs House, Near IGI Airport
New Delhi- 110020

Respondent

Appearance:

Dr. Prabhat Kumar, Advocate for the Appellant
Shri Munsu Ram Dhaniya, Authorised Representative for the
Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: July 10, 2024

FINAL ORDER NO. 56023/2024

JUSTICE DILIP GUPTA

M/s Global Links¹ has sought quashing of the order dated 30.10.2023 passed by the Commissioner of Customs (Airport & General)² by which the Customs Broker License of the appellant that was valid up to 31.12.2026 has been revoked under the provisions

1. the appellant

2 the Commissioner of Customs

of the Customs Brokers Licensing Regulations, 2013³. The order further forfeits the amount of security deposit furnished by the appellant and also imposes penalty of Rs. 50,000/- on the appellant.

2. It transpires from the records that the appellant had filed 46 shipping bills at Air Cargo Complex, IGI Airport, New Delhi for export of readymade garments by M/s UP Garments⁴ under a duty drawback scheme.

3. A show cause notice dated 16.09.2020 was issued to the exporter to show cause why duty drawback should not be denied and the goods already exported should not be confiscated and penalty should not be imposed under sections 114 (iii) and 114AA of the Customs Act, 1962⁵. The show cause notice also called upon the appellant to show cause why penalty should not be imposed upon the appellant under sections 114(iii) and 114AA of the Customs Act.

4. The Additional Commissioner adjudicated the show cause notice by order dated 07.02.2023 and the operative part of the order is:

“(I) I hereby reject the claimed Drawback to the tune of Rs. 1,90,84,449/- (Rupees One Crore Ninety Lakh Eighty Four Thousand Four Hundred Forty Nine Only) in respect of Shipping Bills (Table 4 of the Show Cause Notice) being inadmissible under Section 75 of the Customs Act, 1962 read with in terms of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 since the export proceeds for the said goods has not been realized by or on behalf of the said

3 the 2013 Regulations

4. the exporter

5 the Customs Act

Exporter within nine month time as prescribed under FEMA Act, 1999 & Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 and RBI Master Circular issued in this regard.

(II) I hold that the export goods (with claim/availment of duty drawback) in respect of shipping bills as mentioned in Table-4 of the Show Cause Notice with declared FOB value of Rs. 19,36,38,839/- (Rs. Nineteen Crore Thirty Six Lakh Thirty Eight Thousand Eight Hundred Thirty Nine Only) are liable for confiscation under Section 113(i) and 113(ia) of the Act ibid due to misdeclaration in respect of value, as discussed above, and also due non realisation of the export proceeds. However, as these goods were not subjected to seizure and as such are not available for actual confiscation, I refrain from determining redemption fine on such goods in lieu of confiscation in terms of Section 125(1) of Customs Act 1962.

(III) I impose penalty under Section 114(iii) of the Customs Act, 1962 of Rs. 20,00,000/- (Rs. Twenty Lakh Only) upon the exporter M/s UP Garments (IEC No-0517512696) Noticee 1 for their acts of omission and commission with sole motive to defraud the Govt Exchequer to avail undue drawback.

(IV) I impose penalty under Section 114AA of the Customs Act, 1962 of Rs. 20,00,000/- (Rs. Twenty Lakh Only) upon the exporter M/s U P Garments (IEC No-0517512696).

(V) I impose penalty under Section 114(iii) of the Customs Act, 1962 of Rs. 20,00,000/- (Rs. Twenty Lakh Only) upon Shri Deepak Takkar.

(VI) I impose penalty under Section 114(iii) of the Customs Act, 1962 of Rs. 20, (Rs. Twenty Lakh Only) upon CHA M/s Global Links.

(VII) I don't impose penalty under Section 114AA of the Customs Act, 1962 upon M/s Global Links.

(VIII) I refer the matter of M/s Global Links to the policy wing, New Custom

House, New Delhi-110037 to examine the conduct of M/s Global Links under CBLR-2018."

(emphasis supplied)

5. As the Additional Commissioner had referred the matter to the Policy Wing, New Custom House, New Delhi to examine the conduct of the appellant under the Regulations, the Commissioner of Customs issued a show cause notice dated 09.05.2023 to the appellant.

6. Paragraphs 1 and 2 of the show cause notice are reproduced below:

"M/s Global Links, 105, Bhanot Corner, Pamposh Enclave, Greater Kailash-1, New Delhi - 110048 (hereinafter also referred to as 'the CB' or 'CHA') is a Customs Broker having CB License No. R-008/97/DEL/CUS/2017 (PAN: AADFG5566E) valid upto 31.12.2026, issued by the Commissioner of Customs (Airport & General), New Delhi.

Whereas, copy of Order-in- Original No.- 06/JA/ADC/ACE/2023 dated 07.02.2023 (RUD-1) issued by Shri Jyotiraditya, Additional Commissioner of Customs, ACC-Export, Delhi, to M/s Global Links & Ors. was received in this office on 10.02.2023 wherein the matter was referred to this office for taking appropriate action against the CB."

7. Paragraph 3 of the show cause notice, which runs from page numbers 135 to 173 of the show cause notice, is a mere reproduction of the order dated 07.02.2023 passed by the Additional Commissioner.

8. After reproducing the order passed by the Additional Commissioner in paragraph 3, the show cause notice mentions the following facts in paragraphs 4, 5 and 6.

"4. Whereas from the above. it appears that the CB has violated the following regulations of CBLR 2013 for the reasons narrated in preceding paras:-

Regulation 11(d) of CBLR 2013: 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,

Regulation 11(e) of CBLR 2013: 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:

Regulation 11(n) of CBLR 2013: verify antecedent, correctness of Importer Exporter Cle (IFC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

Regulation 17(9) of CBLR 2013: The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment;

5. Whereas, it appears that the above CB was found to be contravening the provision of Regulation 11(d), 11(e), 11(n) and 17(9) of CBLR, 2013 for the reasons narrated in preceding paras. therefore, in order to establish the contravention as detailed above, an enquiry/examination is essential. Therefore, in terms of Regulation 20 of CBLR

2013, Shri Rajesh Kumar Meena, Deputy Commissioner of Customs, ICD Export Tughlakabad, New Delhi is being appointed as an Inquiry officer in the above discussed case. M/s Global Links, the authorized Customs Broker is required to join the proceedings before the Inquiry officer and to submit his representation, if any. to the inquiry officer within thirty days of the issuance of this Show Cause Notice. The Inquiring authority shall submit a report within ninety days of the issuance of this Show Cause Notice to the Commissioner of Customs (Airport & General), New Custom House, New Delhi.

6. M/s Global Links, 105, Bhanot Corner, Pamposh Enclave, Greater Kailash-1, New Delhi - 110048, Customs Broker having CB License No. R-008/97/DEL/CUS/2017 (PAN: AADFG5566E) valid upto 31.12.2026, in terms of Regulation 20 of CBLR 2013 are hereby called upon to Show Cause to the Commissioner of Customs (Airport & General), New Custom House, New Delhi within thirty days of the receipt of the Inquiry Report, that in terms of the above paras and the Inquiry Report as to Why;

a) they should not be held responsible for contravention of provisions of Regulation 11(d), 11(e), 11(n) and 17(9) of Customs Broker Licensing Regulation 2013;”

(emphasis supplied)

9. The appellant filed a reply to the said show cause notice and the Commissioner of Customs passed an order dated 30.10.2023.

The operative part of the order is as follows:

“In exercise of powers conferred in terms of Regulation 18 & 22 read with Regulation 20 (7) CBLR, 2013,

(i) **I revoke the CB Licence** No. R-008/97/DEL/CUS/2017 (PAN: AADFG5566E) **valid upto 31.12.2026 of M/s Global Links.**

(ii) **I direct the CB to immediately surrender the Original CB License** No.

R-008/97/ DEL/CUS/2017 (PAN: AADFG5566E) valid upto 31.12.2026 along with all 'F/G/H Cards issued there under;

(iii) I order for forfeiture of the whole amount of security deposit furnished by them;

(iv) I impose a Penalty of Rs.50,000/- on M/s Global Links (PAN: AADFG5566E) under Regulation 22 of CBLR, 2013."

(emphasis supplied)

10. It is this order dated 30.10.2023 passed by the Commissioner of Customs that has been assailed in this appeal.

11. It is pertinent to note that though the show cause notice refers to violation of sub-clauses (d), (e), (n) of Regulation 11 as also Regulation 17(9) of the 2013 Regulations, the impugned order upholds the violation of Regulations 11(n) and 17(9) only of the 2013 Regulations and a categorical finding has been recorded by the Commissioner of Customs that the appellant did not violate Regulations 11(d) and 11 (e) of the 2013 Regulations.

12. Dr. Prabhat Kumar, learned counsel for the appellant submitted that the order passed by the Commissioner of Customs deserves to be set aside for the reason that the time limit prescribed in Regulation 20(1) of the 2013 Regulations has not been adhered to by the department. Elaborating this submission, learned counsel submits that the Commissioner of Customs was required to issue the notice in writing to the Customs Broker within a period of 90 days from the date of receipt of the offence report, but in the present case the notice was issued much beyond the said period. Learned

counsel also submitted that the order passed by the Commissioner of Customs also deserves to be set aside for the reason that the provisions of Regulation 11 (n) and 17(9) were not violated by the appellant in the present case. Learned counsel pointed out that not only did the show cause notice not contain any specific charge against the appellant for violating these two Regulations, but the impugned order has not correctly appreciated the factual position.

13. Shri M.R. Dhaniya, learned authorised representative appearing for the department, however, supported the impugned order and submitted that the appellant is not correct in asserting that the time limit prescribed in Regulation 20 (1) of the 2013 Regulations had not been adhered to. Learned authorised representative also submitted that in the facts and circumstances of this case, it cannot be said that the appellant had not violated the provisions of Regulation 11 (n) and Regulation 17 (9) of the 2013 Regulations.

14. The submissions advanced by both the learned counsel for the appellant and the learned authorised representative appearing on behalf of the department have been considered.

15. To appreciate the contentions, it would be appropriate to reproduce the relevant Regulations. Regulation 11 (n) is reproduced below:

"11. Obligations of Customs Broker- A
Custom Broker shall-

(a) xxxx

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

(o) xxxx”

16. Regulation 17 (9) is also reproduced below:

“17. Employment of persons-

(9) The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.”

17. Regulation 20(1) is reproduced below:

“20. Procedure for revoking license or imposing penalty-

(1) The 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.”

18. Regulations 20 (1) of the 2013 Regulations, as noticed above, provides that the Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of 90 days from the

date of receipt of the offence report. Even if the submissions of the learned counsel for the appellant that the show cause notice should be treated as the offence report and not the order dated 07.02.2023 passed by the Additional Commissioner, then too it was necessary for the appellant to specifically state the date on which the Commissioner of Customs received the show cause notice. All that has been submitted by the learned counsel for the appellant is that since the copy of the show cause notice was also marked to the Commissioner of Customs and the office is situated in the same building, it must be presumed that it was received by the Commissioner of Customs.

19. It is not possible to accept this contention of the learned counsel for the appellant. In order to substantiate that the provisions of Regulations 20 (1) had been violated, it was imperative for the appellant to have specifically mentioned the date on which the show cause notice was actually received by the Commissioner of Customs, even if it is assumed that it is the show cause notice that would constitute the offence report and not the order passed by the Commissioner.

20. There is, therefore, substance in the submission advanced by the learned authorised representative appearing for the department that the provisions of Regulations 20 (1) of the 2013 Regulations have not been violated.

21. What has now to be examined is whether the appellant had violated the provisions of Regulation 11 (n) and Regulation 17 (9) of the 2013 Regulations.

22. To examine this contention, it would be necessary to consider the charges that were leveled against the appellant in the show cause notice. It is seen that there is no specific allegation in the show cause notice, either with regard to violation of the provisions of Regulation 11 (n) or with regard to violation of Regulation 17 (9) of 2013 Regulations. Paragraphs 1 and 2 of the show cause notice, which have been reproduced above, merely talk of the Customs Broker License having been issued to the appellant and the order dated 07.02.2023 passed by the Additional Commissioner, which order has also been enclosed as a relied upon document no. 01. Paragraph 3 of the show cause notice is merely a reproduction of the order dated 07.02.2023 passed by the Additional Commissioner and continues from pages 135 to 173 of the appeal memo. After having reproduced the order passed by the Additional Commissioner in these many pages, the show cause notice, in paragraph 4 which has also been reproduced above, merely states that it appears that the Customs Broker violated these four Regulations and these four Regulations have been reproduced in the same paragraph.

23. It clearly transpires that the show cause notice does not give any reason as to why the said four Regulations of the 2013 Regulations had been violated. The order impugned in this appeal is, therefore, liable to be set aside for this reason alone as the show cause notice is the very foundation of an order.

24. The order that has been passed by the Commissioner of Customs can also be examined on merits. In regard to violation of Regulation 11(n) of the 2013 Regulations, the reply filed by the appellant, as contained in the order, is reproduced below:

“(iii) There is no contravention of regulation 11(n) of CBLR as there no allegation of the incorrectness of Importer Exporter Code (IEC) number or Goods and Services Tax Identification Number (GSTIN) and functioning of Exporter at the declared address. The IEC number of the Exporter has been found to be genuine. Similarly, the Exporter has been found to be functioning at his declared address. Hence, there is no contravention of regulation 10(n) of CBLR and as such the show cause notice may be quashed.”

25. The Commissioner of Customs, after reproducing the reply filed by the appellant, merely observes that the Customs Broker had not obtained the KYC document directly from the exporter and secondly billing M/s Satyam Aviation Pvt Ltd. instead of the exporter would constitute a violation of Regulation 11 (n). The relevant portion of the order passed by the Commissioner of Customs is reproduced below:

“Therefore, in the given matrix of facts, there appear two infractions in the context of obligation on CB under Regulation 11 (n) of CBLR, 2013. Therefore, I take cognizance of the said two infarctions, i.e., not obtaining KYC documents directly from the exporter and secondly, billing M/s Satyam Aviation Pvt. Ltd instead of the exporter etc. Business dynamics may have compelled the CB to procure business from a third party but billing somebody who is completely unconnected should have alarmed CB. I, thus, find that the CB was in violation of provisions of Regulation 11(n) of the CBLR, 2013.

(emphasis supplied)

26. It is not in dispute that the appellant had submitted the KYC documents. This fact is also evident from the paragraph 2 of the order dated 07.02.2023 passed by the Additional Commissioner wherein it has been stated that the KYC documents, purchase invoice, bank statements were submitted by the appellant. What persuaded the Commissioner of Customs to hold that Regulation 11(n) has been violated is the fact that the KYC documents were not directly obtained from the exporter. This cannot be said to be a relevant ground for violation of Regulation 11 (n) of the 2013 Regulations as the KYC documents were submitted by the appellant. This apart, as to who ultimately billed cannot also be a relevant factor for holding that Regulation 11 (n) of the 2013 Regulations has been violated.

27. Thus, it is not possible to sustain the finding recorded by the Commissioner of Customs that Regulation 11 (n) of the 2013 Regulations has been violated.

28. In regard to violation of Regulation 17(9) of 2013 Regulations, it is to be noticed that apart from the fact that the show cause notice does not contain any specific allegation regarding violation of the Regulations, the Commissioner of Customs has merely reproduced the reply submitted by the appellant and, thereafter, the order passed by the Additional Commissioner and from those two facts has concluded that the Regulation 17 (9) of the 2013 Regulations had been violated.

29. The show cause notice should have spelt out specific charges in regard to violation of Regulation 17(9) of the 2013 Regulations. Even the reply submitted by the appellant has not been considered at all and a finding is based on the order dated 07.02.2023 passed by the Additional Commissioner.

30. Thus, the Commissioner of Customs was not justified in holding that the provisions of the Regulations 17 (9) of the 2013 Regulations have been violated.

31. It is, therefore, not possible to sustain the order dated 30.10.2023 passed by the Commissioner of Customs. It is, accordingly, set aside and the appeal is allowed.

(Order pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Diksha