Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12219 of 2019- DB

[C/Misc/10566/2024]

(Arising out of OIO-KDL-CUSTM-000-COM-05-2019-20 dated 11/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-KANDLA)

All Marine Cargo Services **........Appellant**
Office No. 111,112 B,
Rishabh Corner, Sector 8, Gandhidham
Gandhidham, Gujarat

VERSUS

Commissioner of Customs -Kandla **......Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Vinay N. Ansurkar, Advocate for the Appellant
Shir P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11575/2024

DATE OF HEARING: 09.05.2024
DATE OF DECISION: 16.07.2024

RAMESH NAIR

The present appeal has been filed by the appellant against the Order-in-Original No. KND-CUSTM-000-COM-05-2019-20 dated 11.06.2019. In this Order the adjudicating authority in his capacity as the Licensing Authority for the Customs Broker, has ordered revocation of the licence held by the appellant as Customs broker. Further, he has ordered forfeiture of the full amount of security deposit furnished by the customs broker and also imposed a penalty of Rs. 50,000/-.

1.1 Briefly stated the facts of the case are that it is brought out that a specific intelligence was gathered by the officers of DRI that the goods covered under the Bill of Entry bearing No. 3130325 dated 06.09.2017 filed by M/s Crescent Traders (hereinafter referred to as the 'importer') were mis-declared in respect of value and other material particulars. Intelligence also suggested that some of the goods were in violation of Bureau of Indian Standards (BIS) norms and some of the imported goods involved in the said Bill of Entry were counterfeit goods of some well-known brands and infringing Intellectual Property Rights. Investigation revealed that the importer was a dummy firm as its purported Proprietor Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photo gives by him in relation to job were mis-used for opening IEC in the name M/s. Crescent Traders, Dombivali (W); instead Shri Nasir Khan was the actual importer/controller of M/s Crescent Traders and he used fake documents/ details in relation to fraudulent import of goods to evade his liability from the Govt. enforcement agencies. Further it appeared that the CB M/s All Marine Cargo Services filed Bill of Entry in respect of the goods imported by M/s Crescent Traders without verifying the KYC documents and genuineness of the importer. The said customs broker has mis-declared/undervalued the goods in question without applying their own mind and without inquiring further into the matter, in details. Various statements of the employee of appellant were recorded. Accordingly a show cause notice dtd. 25.09.2018 was issued to the appellant under Regulation 14 and 18 of CBLR 2018 alleging various contravention under Regulation 10(a),10(d),10(e),10(f),10(n)and 13(12)of the CBLR `2018 which culminated into impugned order wherein the Commissioner revoked the license and ordered for forfeiture of entire security deposit and imposed penalty of Rs.50,000/-. The appellant is in appeal against this impugned order.

2. Shri Vinay N Ansurkar, Learned Counsel appearing on behalf of the Appellant submits that the impugned order passed by the Ld. Commissioner being in gross violation of principles of natural justice is not legally sustainable. In fact by not allowing the extension of time of week to submit the representation to inquiry report, the proceeding under CBLR 2018 have been vitiated.

2.1 He further submits that neither the Inquiry officer nor the Ld. Pr. Commissioner gave an opportunity to the Appellant to bring the correct facts on record by way of a cross examination of the persons whose statements were relied upon by the department. The cross examination of Shri Sandesh G Tanwar, Proprietor of M/s Cresent Traders would have demolished the case of the Department that the said Importer was not a dummy firm. Hence it was of a vital importance to the Appellant's case.

2.2 He also submits that the Regulation 17(3) of the CBLR, 2018 lays down a procedure which includes cross examination of the witnesses and allows the Inquiry officer to put question to a person tendering evidence for or against the Customs Broker. Despite so the Inquiry officer chose not to allow the cross examination of the people whose evidence was of vital importance in the facts of the matter. In facts, the inquiry officer delayed the issuance of his report dtd. 29.04.2019 (issued on 09.05.2014) beyond the prescribed period of 90 days from the notice dtd. 25.09.2018 (Regulation 17(5) of CBLR 2018)

2.3 He further submits that the show cause notice dtd. 10.09.2018 issued under the Customs Act 1962 which is the only relied upon document besides the statements has not been adjudicated upon by the department till date and therefore upholding the charges under CBLR 2018 which are of procedural nature is a pre-mature action on the part of the Ld. Commissioner.

2.4 He also submits that both the inquiry report and the impugned order have been passed in gross violation of principles of natural justice which have caused a grave injustice, irreparable harm having loss of business and source of livelihood of the employees of the Appellant for last four years from the date of the impugned order.

2.5 He placed reliance on the following judgments:-

- Leo Cargo Services – 2022(382)ELT 30(Del.)
- GSP Shipping & Logistics Agency – 2021(376)ELT 527 (Tri. Kolkata)

3. Shri P. Ganesan , Learned Superintendent (AR) appearing on behalf of department reiterated the findings given by Learned Commissioner of Customs.

4. Heard both sides and perused the records.

4.1 We find that in the present matter the undisputed facts are that the appellant filed Bill of Entry for import of goods for the importer M/s. Cresent Traders. The investigation revealed goods covered under Bill of Entry were undervalued, mis-declared, undeclared/concealed and prohibited in nature. Further as per revenue the importer was a dummy firm. Alleging violation on the part of the appellant Customs Broker, the Commissioner Customs initiated proceeding under CBLR, 2018 (erstwhile CBLR, 2013) by issuing a notice to the appellant; Inquiry Officer was appointed and on the basis of the said Inquiry report, in the impugned order the adjudicating authority directed revocation of license, forfeiture of security deposit and imposition of penalty of Rs. 50,000/- on the appellant.

4.2 We find that the main contention of the Appellant is that neither the Inquiry officer nor the Ld. Commissioner gave an opportunity to Appellant to bring the correct facts on records by way of cross-examination of the persons whose statements were relied upon by the Department. Further the Inquiry officer delayed the issuance of his report beyond the prescribed period provided under CBLR 2018, hence the impugned order is not sustainable in law. We find force in argument and submission of Appellant in this context. We noticed that Regulation 17 of CBLR, 2018 prescribes the procedure for revoking the license or imposing penalty. The time limit(s) prescribed under the CBLR, 2018 is mandatory and not directory and plethora of judgment has also repeatedly held so.

4.3 It is necessary to set forth the relevant regulations applicable to the present case. Customs Broker Licensing Regulation, 2018 was notified on 14-5-2018. The relevant extracts of Regulation 17(1), 17(5) & 17(7) are set forth below:-

> ***"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.*

(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).

(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."

4.4 In terms of Regulation 17(1), a show cause notice is to be issued within 90 days from the date of *receipt* of the Offence report, while Regulation 17(5) prescribes a time period of 90 days from the date of issue of Show Cause Notice for submission of an Inquiry Report. Regulation 17(7) prescribes that within 90 days from the date of the submission of the Inquiry Report and after consideration thereof, the Principal Commissioner/Commissioner shall pass orders either revoking the suspension of license or revocation of license of the Customs Broker.

4.5 Once an Offence Report is issued, the time period as provided in the CBLR commences. The scheme of these Regulations is such that even a delay in one or more sub-regulation(s) of Regulation 17 of CBLR, 2018 will have a cascading effect on the subsequent timelines, causing a consequential delay at each stage. On a perusal of the record, it is evident that the offence report against the Appellant was issued on 10-09-2018. The Inquiry Report submission under sub-regulation (5) of Regulation 17 was to be done within 90 days of the date of issue of SCN *i.e.* within 90 days from 25-09.2018 in the present matter.. However, the Inquiry Report was delayed and only issued beyond the period of 90 days, on 29-04-2019. Hence, there was a delay under Regulation 17(5). The question is arising that the time stipulated under Regulation for filing such report is only directory and not mandatory. The very same issue was considered by the Division Bench of the Delhi High Court in a case reported in 2016 (338)

E.L.T. 347 (Del.), *Impexnet Logistic* v. *Commissioner of Customs (General)*. The Delhi High Court at paragraph Nos. 6 to 10 has observed as follows:-

> *"6. From the list of dates submitted by the Respondent, it appears that an enquiry report dated 4th March, 2015 was forwarded by the Inquiry Officer only on 10th March, 2015 which was 13 months after the suspension of the licence. It is thereafter that the impugned order dated 1st June, 2015 was passed after affording the petitioner an opportunity of being heard.*
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> *7. It is plain that in the case there has been a violation of the time-limits set out in Regulation 20 of the CBLR (corresponding to Regulation 22 of the CHALR) in the decision dated 12th May, 2016 in Cus. AA 25/2015 (Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General) [2016 (337) E.L.T. 41 (Del.)] this Court held :*
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>> *"6. The time limits in the CHALR, 2004 for issuance of the SCN to the CHA licence holder and completion of the inquiry within 90 days of issuance of such SCN are sacrosanct. The aforesaid time limits were engrafted into Regulation 22 of the CHALR, 2004 by a Notification No. 30/2010-Cus. (N.T.), dated 8th April, 2010. Simultaneously, the CBEC issued Circular No. 9/2010, dated 8th April, 2010 clarifying the procedures governing the suspension and revocation of CHA licence. In para 7.1 of the said Circular, it was noted as under :*
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>>> *"7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of issue of Show Cause Notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations."*
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>> *7. This Court has consistently emphasised the mandatory nature of the aforementioned time limits in several of its decisions. These include the decision in Schankar Clearing* **&** *Forwarding v. C.C. (Import* **&** *General), 2012 (283) E.L.T. 349 (Del.), the order dated 25th April, 2016 passed by this Court in Customs Appeal No. 14/2016 (Commissioner of Customs (General) v. S.K. Logistics) and the order dated 29th April, 2016 in W.P. (C) No. 3071/2015 (Sunil Dutt v. Commissioner of Customs (General) New Customs House). The same position has been reiterated by the Madras High Court in Sanco Trans Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai, 2015 (322) E.L.T. 170 (Mad.) and Commissioner v. Eltece Associates, 2016 (334) E.L.T. A50 (Mad.)."*
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> *8. Recently by an order dated 24th April, 2016 in W.P. (C) No. 1734/2016 [HLPL Global Logistics Pvt. Ltd. v. The Commissioner of Customs (General)*

[2016 (338) E.L.T. 365 (Del.)] this Court reiterated that the time-limits in Regulation 20 of the CBLR/Regulation 22 of the CHALR are sacrosanct.

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December, 2013, i.e. beyond the mandatory period of 90 days from the date of receipt of the offence report by the Respondent, i.e. 31st January, 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN.

10. Consequently, the Court set asides the impugned order dated 1st June, 2015 passed by the Respondent revoking the licence of the petitioner."

4.6 We also find that ,Delhi High Court decision reported in 2016 (337) E.L.T. 41 (Del.), *Indair Carrier Pvt. Ltd.* v. *Commissioner of Customs (General)*, has observed at paragraph No. 42 as follows :-

> *"42. Once the limitation prescribed is mandatory, as has been declared by the Courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored."*

4.7 Perusal of the above said decisions and also decision relied upon by the Appellant would show that the time stipulated under the Regulations for issuing the show cause notice as well as the filing report is not directory but it is mandatory. Following the decisions, we are of the view that the proceedings are vitiated by non-compliance of time limit prescribed in the Regulation.

4.8 We also find that department in the present matter relies upon the statements of witnesses. The right of cross-examination has been recognized under Regulation 17(4) of the CBLR Regulations, 2018, which requires Inquiry Officer to give reasons if he intends to deny such right to the Customs Broker. Recognizing the right of cross-examination, in the case of *Flevel International* v. *Commissioner of Central Excise* - 2015 SCC OnLine Delhi 12173 : 2016 (332) E.L.T. 416 = [2015] 62 taxmann.com 294 (Delhi)/52 GST 827 (Delhi) held as under :-

"42. It is settled law that the denial of an opportunity of cross-examination of a witness whose statements have been relied upon in the adjudication order would vitiate the order of adjudication. In Basudev Garg v. Commissioner of Customs - 2013 (294) E.L.T. 353 (Del.), this Court referred to Section 9D of the CE Act and noted that even while upholding its

constitutional validity in J & K Cigarettes Ltd. v. Collector of Central Excise - 2011 (22) S.T.R. 225 (Del.), a Division Bench of this Court had observed that the circumstances under which the right of cross-examination can be taken away would have to be 'exceptional'. This would include circumstances where the person who had given the statement was dead or cannot be found or is incapable of giving evidence or is kept out of the way by adverse party or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances, the Court considers unreasonable. It was held by the Court in Basudev Garg (supra) that "it is clear that unless such circumstances exist the noticee would have a right to cross-examine the person whose statements are being relied upon even in quasi judicial proceedings."

4.9 In yet another case, in the matter of *Him Logistics Pvt. Ltd.* v. *The Principal Commissioner of Customs*, 2016 SCC On Line Del 1236 = 2016 (336) E.L.T. 15 (Del.), observed as under :-

"16. In the present case, it is an admitted fact that the Respondent Department is placing considerable reliance on the statements of Mr. Shyam Lal and Ms. Preeti, the partners of the importer, in support of the case made out in the SCN. The impugned order of the AA does not indicate that any prejudice would be caused to the Department by providing the Petitioner the right of cross-examination. On the other hand the denial of such right would prejudice the Petitioner since the said statements are adverse to the Petitioner. In the circumstances, the denial of the Petitioner's right of cross-examination is held contrary to the law explained in Basudev Garg (supra)."

4.10 In the present case, the Appellant questioned the integrity of the statements of the persons recorded under Section 108 of the Customs Act, 1962. Such statements were required to be tested through cross-examination. Despite specific request by the Appellant to cross examine such witnesses, no attempt was made to secure their presence in the adjudication proceedings. As per Regulation 17(4) of CBLR, 2018, if the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines the permission to examine any person on the ground that his evidence is not relevant or material, he needs to record the reasons in writing for doing so but the Inquiry Officer assigned no reason what so ever. The Commissioner of Customs ignored the error on the part of the Inquiry Officer to grant an opportunity of cross examination of the importer and other persons. Provisions of Regulation 17(4) were given a complete go-by. Not allowing the Customs broker an opportunity to cross-examine the persons examined in support of the grounds forming the basis of these proceedings has resulted in serious prejudice to the Appellant.

5. In view of our discussion above, we set aside the impugned order. Consequently, the appeal of the appellant is allowed with consequential relief.

(Pronounced in the open court on 16.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha