CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

CUSTOMS Appeal No. 10787 of 2021 - DB

[Arising out of Order-in-Original Appeal No KND-CUSTM-000-02-2021-22 dated 10.06.2021 passed by Commissioner of CUSTOMS-KANDLA]

RICHIES CARGO LOGISTICS PVT LTD ...Appellant

A Company Incorporated Under The Comapnies Act 1956
Having Its Sector-2 Plot No 138 Tenament No 138
Tenament No 3 Gandhidham
Kutch, Gujarat – 370205

VERSUS

C.C.-KANDLA ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

With

CUSTOMS Appeal No. 10788 of 2021 - DB

[Arising out of Order-in-Original/Appeal No KND-CUSTM-000-15-2019-20 dated 24.12.2019 passed by Commissioner of CUSTOMS-KANDLA]

RICHIES CARGO LOGISTICS PVT LTD ...Appellant

A Company Incorporated Under The Comapnies Act 1956
Having Its Sector-2 Plot No 138 Tenament No 138
Tenament No 3 Gandhidham
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VERSUS

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Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 12068-12069/2024

DATE OF HEARING: 24.06.2024
DATE OF DECISION: 20.09.2024

RAJU

These appeals have been filed by the M/s. Richi Cargo Logistic Private Limited against the Order-In-Original No. KND-CUSTM-000-COM-15-2019-20 dated 24.12.2019 and Order-In-Original No. KND-CUSTM-000-COM-02-2021-22 dated 10.06.2021.

2. The facts of the case are that a case was booked against M/s. Sun Enterprise in respect of imports sought to be cleared under Bill of Entry No. 4307675 dated 09.01.2014 filed with custom house through CHA M/s. Saarthee Shipping Company. The containers were found to contain contraband mainly cigarette valued at Rs. 6,84,00,000/- and the declared goods namely waste paper valued at Rs. 10,06,329/-. Further investigations revealed that Shri Amit Bhardwaj proprietor of M/s. Saarthee Shipping Company, Gandhidham had given job of clearance of the said consignment to be imported in the name of Sun Enterprises Ahmedabad to Shri Sunit Bhardwaj Director of M/s. Richies Cargo Logistics Private Limited the appellant. During a statement Shri Sunil Bhardwaj, Proprietor of M/s. Richies Cargo Logistics Private Limited the appellant admitted that they had received the document for the clearance of the consignment of waste papers in the name of M/s. Sun Enterprises from Shri Amit Bhardwaj of M/s. Saarthee Shipping Company. He also admitted that they had not verified the antecedents of the importers and had not obtained any authorization from these importers as well.

3. The appellant were charged with violation of Regulation 10 (a), 10 (d), 10 (e), 10 (j), 10 (k), 10 (n) of CBLR 2013 (and also 11 (a), 11 (d), 11 (j), 11 (k), 11(e), 11(n) of CBLR 2018) for violations the appellant were charged as to why the custom broker license issued to them should not be revoked under Regulation 14 of the Custom Broker Licensing Regulation (erstwhile Regulation 18 of CBLR 2013). The security furnished by the appellant for issuance of license should not be forfeited under Regulation 14 of CBLR, 2018 (Regulation 18 of CBLR 2013) and penalty should not be imposed in terms of Regulation

18 of CBLR 2018 (Regulation 18/22 of CBLR of 2013) read with Regulation 17 of CBLR 2018 (Regulation 20 of CBLR 2013) for aforesaid violation. The show cause notice was issued to the appellant on 06.12.2018 seeking to revoke CBLR license to the appellant forfeit the security given by the appellant and impose penalty under CBLR 2013 (CBLR 2018 Regulations).

4. The appellant challenged the show cause notice issued after a period of four years from date of filing of offence report before Hon'ble High Court of Gujarat through Special Civil Application No. 20744 of 2018. That the said appeal was disposed of by Hon'ble High Court by giving liberty to the appellant to file written submission only on the point of limitation in respect of the show cause notice issued on 06.12.2018 under Customs Act dated 03.03.2016 received by customs house Kandla on 08.11.2018 and let the issue of limitation be decided first. The said issue of limitation was decided by the commissioner treating the show cause notice dated 03.03.2016 as the offence report. It held that show cause notice issued under CBLR 2013 has been issued within the period of limitation starting with date of receipt (08.11.2018) of show cause notice under Customs Act dated 03.03.2016. The appellant challenged the said order before Hon'ble High Court. Hon'ble High Court permitted to withdraw the petition and directed when to approach Tribunal. The Appeal No. 10787 of 2021 filed against the order of commissioner holding that the show cause notice was issued within the period of limitation.

5. Earlier a show cause notice was issued in the matter involving suspension of the license of the appellant. Tribunal in the said proceeding relating to suspension vide Final Order No. A/12657/2017 dated 19.09.2017 observed as follows :-

> *"6. We find that arising out of the same set of facts and circumstances initiated against another broker namely, Saarthee Shipping Company, this Tribunal taking into consideration various provisions of CBLR, 2013 set aside the order dated 3.3.2015 under Regulation 19(2) of CBLR, 2013 against the said Customs broker. This Tribunal has observed as under:*

"13. Taking into account the facts and circumstances of the present case, we find that investigation report was submitted on 15.10.2014 as revealed from order dated 15.10.2014, Issued under Regulation 19(1) and no order was passed within 30 days from the date of the saId order under Regulation 19(2). The impugned order dated 03.3.2015 under Regulation 19(2) was issued after about five and half months in a wrong premises that "since the investigation of the case is still in progress" and no enquiry under Regulation 20 was initiated till date and such order can not be sustained and is liable to be set aside".

6. In the instant case the appellant has obtained the investigation report issued by the office of the Commissioner of Customs- Kutch Commissionerate SIIB branch dated 17.10.2014, wherein the entire facts of the case are narrated and recommendation for initiation of proceeding against the appellant have been made.

7. The Appeal No. 10788 of 2021 relates solely to the issue of limitation in the order impugned in the said case. In para 17 of the order following has been stated :-

"17. The CB has claimed that the Show Cause Notice has been issued after expiry of limitation period of 90 days from the date of receipt of the report. However I find that SCN F. No. S/43-29/SIIB/2013-14/Pt.I dated 03.03.2016 has been received by Custom House, Kandla on 08.11.2018 vide letter F. No. S/7- 81/CHA/Mundra/2015 dated 02.11.2018 and on the basis of which SCN F. No. S/7-64/CHA/2014 has been issued on 06.12.2018. So, considering the above, the date of receipt of offense report is 08.11.2018 and the dated of issuance of SCN to CB under CBLR, Regulation is 06.12.2018. Thus the SCN has been issued well under 90 days."

8. It is observed that in the instant case the investigation report was issued letter dated 17.10.2014 which has been obtained by the appellant under RTI request dated 30.09.2022 made vide Letter No. S-43-29/SIIB/2013-14. The order of the Commissioner treats the show cause notice dated 03.03.2016 issued under Custom Act 1962 as offence report. It is noticed that earlier Tribunal in its order dated 19.09.2017 (supra) in similar circumstances has already held that the investigation report dated 17.10.2014 needs to be treated as the offence report for the purpose of CBLR 2013. The OIO NO. KND-CUSTM-000-COM-15-2019-20 dated 24.12.2019 observed as follows:-

> *" 16. Accordingly, SCN F. No. 8/43-29/SIIB/2013-14/Pt.I dated 03.03.2016 was issued to the director Shri Sunil V Bhardwaj, Director of the CB, M/s Richies Cargo Logistics Pvt. Ltd and other noticees and this SCN (offence report) was received in Custom House Kandla, vide letter F. No. S/7-81/CHA/Mundra/2015 dated 02.11.2018. Based on the receipt of the offense report, SCN dated 06.12.2018 was issued to the CB.*
>
> *17. The CB has claimed that the Show Cause Notice has been issued after expiry of limitation period of 90 days from the date of receipt of the report. However I find that SCN F. No. S/43-29/SIIB/2013-14/Pt.I dated 03.03.2016 has been received by Custom House, Kandla on 08.11.2018 vide letter F. No. S/7- 81/CHA/Mundra/2015 dated 02.11.2018 and on the basis of which SCN F. No. S/7-64/CHA/2014 has been issued on 06.12.2018. So, considering the above, the date of receipt of offense report is 08.11.2018 and the dated of issuance of SCN to CB under CBLR, Regulation is 06.12.2018. Thus the SCN has been issued well under 90 days."*

Since, the investigation report, the offence report in the instant case, was issued on 17.04.2014 and the show cause notice was issued on 06.12.2018 it is clearly barred by limitation consequently. The show cause notice itself does not survive the best of limitation.

9. Since, the show cause notice issued for revocation of license, forfeiture of security and for imposition of penalty under CBLR 2013 itself does not survive on the ground of limitation, the question of revocation, forfeiture and imposition of penalty also does not arise. Consequently, the order impugned in Appeal No. C/10787/2021 also does not survive.

10. The appeals are consequently allowed.

(Pronounced in the open court on 20.09.2024 *)*

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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