

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: C/40021/2013

[Arising out of Order-in-Original C. No. VIII/10/25/2003-CHAL
dated 04.10.2012 passed by the Commissioner of Customs,
Custom House, Tuticorin.]

M/s. Elite Shipping Services, : **Appellant**
No. 2F/1547, Asirvatham Nagar,
2nd Street, P&T Colony (South),
Tuticorin – 628 008

Versus

The Commissioner of Customs, : **Respondent**
Custom House, New Harbour Estate,
Tuticorin – 628 004

Appearance:-

Shri. B. Satish Sundar, Advocate
for the Appellant
Shri. B. Balamurugan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 05.12.2018

Final Order No. **43106 / 2018**

Per Madhu Mohan Damodhar :

Brief facts of the matter are that appellants are a licensed Custom House Agent (CHA) issued under the Custom House Agent Licensing Regulations (CHALR), 2004, wherein licence was issued in Tuticorin. The appellants were also having a branch in Chennai.

2.1 Pursuant to investigations conducted by the DRI, it emerged that goods exported under a Shipping Bill No. 3875216 dated 29.08.2010 declared as textiles and readymade garments, were found to have been used to smuggle out 51.23 kgs of goods alleged to be Ketamine, as informed by the Malaysian Customs Authorities on interception of the impugned container after it reached that country. From the investigations conducted, it appeared that one Shri. D. Arulraj, partner of the appellant and in charge of the Chennai Branch of the appellant was actively involved in facilitating the alleged smuggling.

2.2 The DRI issued a Show Cause Notice dated 25.02.2011 under the provisions of the Customs Act *inter alia* proposing imposition of penalties under Section 114 of the Customs Act, 1962. The Department also initiated proceedings against the appellants under provisions of the CHALR under Regulation 22 thereof vide a Show Cause Notice dated 10.01.2012. These proceedings culminated in the impugned Order dated 04.10.2012 ordering revocation of the CHA licence issued to the appellants as also forfeiture of security deposit of Rs. 75,000/- furnished by them. Hence this appeal.

3. When the matter came up for hearing, Ld. Advocate Shri. B. Satish Sundar appearing for the appellant made oral and written submissions which can be broadly summarized as under :

- (i) That the CHALR, 2004 before its amendment, did not provide for time-limits for finalization of proceedings against the errant CHA. Vide Circular No. 09/2010-Cus. dated 08.04.2010 the CBEC clarified the procedures with respect to issue and operation of Custom House Agent licence. The Circular at paragraph (v) 7.1 and 7.2, prescribes time limits for completion of suspension proceedings against CHA licence under Regulation 22. The Circular and the subsequent amendment to the CHALR, 2004 is binding on the respondent/Department;
- (ii) That in the present case, the action taken against the CHA licence of the appellant is beyond the time limits prescribed. It is undisputed that the offence report in the present case came to be issued by the DRI on 20.09.2010 and the final Order of revocation is dated 04.10.2012, nearly two years and 15 days after the receipt of the offence report, whereas the Circular itself prescribes an outer time limit of nine months from the date of the offence report for completion of the proceedings

against the errant CHA. The time limit so prescribed is mandatory and not directory as has been held by the Hon'ble Delhi High Court in the case of *Ind Air Carrier Ltd. Vs. Commissioner of Customs (General) reported in 2016 (337) E.L.T. 41 (Del.)* and in the case of *Impexnet Logistic vs. Commissioner of Customs (General) reported in 2016 (338) E.L.T. 347 (Del.)*. On this score alone, the entire proceedings against the appellant culminating in the impugned Order passed by the respondent stands vitiated;

- (iii) That from a reading of the materials especially the Show Cause Notice issued by the DRI under Section 124 of the Customs Act, 1962, it can be seen that the appellant was not made a party to the same and only Shri. D. Arulraj, the partner of the appellant in his individual capacity was made a party against whom a penalty was also imposed. That is to say that for any misfeasance on the part of the errant partner, the firm, namely the appellant, cannot be penalized as there are no considered findings against the appellant-firm in the Order in adjudication dated 29.03.2012 passed by the Additional Commissioner of Customs (Exports), Chennai. Thus, even on merits, the appellant cannot be made liable and therefore, the

impugned Order of the respondent revoking the appellant's licence cannot be sustained on the face of it which has to be set aside accepting the aforesaid contentions;

- (iv) That the further fact that the appellant's licence itself has been inoperative on account of firstly the Order of suspension and the subsequent revocation itself would be sufficient punishment and therefore, the prayer of the appellant is to set aside the impugned Order and allow the appellant to operate as a Customs House Agent/Customs Broker.

4.1 On the other hand, Ld. AR Shri. B. Balamurugan appearing for the Department supports the impugned Order. He points out that the investigations have clearly proved that the partner of the appellant based in Chennai had been actively involved in the entire operation.

4.2 Ld. AR further submits that the CHALR, 2004 did not have any time limits for completion of the proceedings initiated thereunder. He contends that any such time limits brought about by the Board Circular would require to be followed only by the Department Officers and cannot be considered as a part of the Regulations; the appellants therefore cannot take the help of such a Board Circular in their defence.

5. Heard both sides and have gone through the facts of the matter.

6. From the facts on record, we find that the DRI had forwarded an offence report dated 20.09.2010 to the Chennai Customs authorities. Immediately thereon, an order of Prohibition against the operation of the CHA licence of the appellant was issued by the Chennai Customs on 24.09.2010 and thereafter, the matter was referred to the Commissioner of Customs, Tuticorin for further action in terms of the CHALR, 2004. Further proceedings, including issue of an order of Interim Suspension of the licence dated 01.10.2010 were initiated by the Commissioner of Customs, Tuticorin. Show Cause Notice was issued to the appellants on 10.01.2012. The Enquiry Officer appointed completed the enquiry and submitted the report dated 03.04.2012. The said proceedings initiated under the CHALR have finally culminated in the impugned Order dated 04.10.2012.

7. In the circumstances, we thus find that there is a delay of more than two years after receipt of the offence report, for completion of the proceedings under the CHALR, 2004. In this regard we find that the CBEC had issued a Circular No. 09/2010-Cus. dated 08.04.2010 conveying a series of instructions with regard to various issues

under CHALR. In paragraph 7.1 of the same, the Board has prescribed an overall time limit of nine months from the date of receipt of the offence report and has also prescribed time limits at various stages of the issue of Show Cause Notice, submission of enquiry report, passing of Order by the Commissioner of Customs, etc.

8.1 Ld. AR was at pains to submit that the guidelines issued by the Board cannot be treated as forming part of the CHALR. However, we find that in a series of judgements by the Hon'ble High Court of Delhi, the Court has consistently emphasized the mandatory nature of the time limits prescribed in the said Board Circular. In the case of *Ind Air Carrier Ltd.(supra)*, the Hon'ble Delhi High Court has held as under :

“ 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 :

“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."

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 (M/s. 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.).

8. Consequently, the Court is unable to sustain the directions issued by the CESTAT in the impugned order dated 11th March, 2015, permitting the Respondents to proceed with and complete the inquiry within a further period of 60 days from the date of the impugned order of the CESTAT despite noting that the mandatory time-limits under the CHALR had not been adhered to. The impugned order dated 11th March, 2015 of the CESTAT is accordingly set aside.

9. As a result, the SCN issued by the Respondents to the Petitioner pursuant to the order of the CESTAT on 17th March, 2015, the consequential inquiry report dated 16th April, 2015 and the order dated 7th May, 2015 passed by the Respondents revoking the Petitioner's licence are also held to be unsustainable in law and are hereby set aside.

10. The CHA licence of the Petitioner/Appellant that stood revoked will stand revived forthwith. In the event that the Petitioner's original CHA licence has expired in the meanwhile, its application for renewal will be processed by the Respondents without unnecessary delay. The appeal and the writ petition are allowed in the above terms with no order as to costs."

8.2 The ratio in the case of *Ind Air Carrier Ltd.(supra)* judgement was once again reiterated by the Hon'ble High Court of Delhi in the case of *Impexnet Logistic (supra)*.

9. Viewed in this light, we find that the non-adherence of time limit of nine months from the date of issuance of the offence report to passing of order by the Commissioner, in the present case will vitiate the impugned Order. The impugned Order ordering revocation of the licence and forfeiture of security deposit cannot then be sustained and will have to be set aside, which we hereby do.

10. The appeal is allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd