

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. III

Customs Appeal No. 42697 of 2018

(Arising out of Order-in-Original No. 65819/2018 dated 30.10.2018 passed by the Commissioner of Customs, Chennai-VIII, 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. S.B. Enterprises,

New No. 63, Old No. 33, 3rd Floor,
Coral Merchant Street,
Chennai – 600 001

: Appellant

VERSUS

The Commissioner of Customs,

Chennai-VIII Commissionerate,
Custom House, No. 60, Rajaji Salai,
Chennai – 600 001

: Respondent

APPEARANCE:

Ms. A. Aruna, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 40624 / 2019

DATE OF HEARING: 29.03.2019

DATE OF DECISION: 29.03.2019

PER BENCH :

The appellants are holders of Customs Broker Licence issued by Chennai Customs Commissionerate.

2.1 Pursuant to specific information, the Chennai Zone Unit of the Directorate of Revenue Intelligence (DRI) intercepted the export of consignment of one M/s. Laxmi Traders covered under Shipping Bill No. 8096689 dated 18.08.2017 declared as 100% Cotton Tufted Floor mats. On detailed examination, it was found to contain 207 Nos of Red Sander logs totally weighing 5.250 MT valued at Rs. 2,10,00,000/- along with 15 Nos

Mats LDPE bags and 7 Nos waste cotton yarn LDPE bags. The said consignment had been handled by the aforesaid appellant as Customs Broker.

2.2 Proceedings were therefore initiated under Customs Brokers Licensing Regulations (CBLR), 2013 alleging that the appellants had neither collected the KYC of the exporter nor ascertained the correctness of the IEC and identity of the client, as prescribed in Regulations 11(a) and 11(n) of the CBLR, 2013. As per the requirements of the CBLR, an Inquiry Officer was appointed. Pursuant to the issuance of the Show Cause Notice dated 03.05.2018, the said Inquiry Officer submitted his reported on 18.07.2018 wherein it was *inter alia* held that the charge of failure on the part of the Customs Broker to comply with Regulation 11(a) of the CBLR is proved. However, the charge of failure to comply with Regulation 11(n) of the CBLR is not proved.

2.3 The competent authority vide Order dated 30.10.2018 (order impugned herein) ordered revocation of the licence of the appellant under the provisions of Regulation 20(7) of the CBLR, 2013, forfeiture of Rs. 25,000/- from security deposit under Regulation 18 *ibid* and imposed penalty of Rs. 50,000/- under Regulation 22 *ibid*. Hence, this appeal.

3. Today when the matter came up for hearing, Ld. Advocate Ms. A. Aruna appearing on behalf of the appellant made a number of submissions which can be summarized as under :

- (i) The order of revocation dated 30.10.2018 has also been issued more than ninety days after the submission of the Inquiry Report by the Inquiry Officer.
- (ii) She relied upon the ratio of the following case law :
 - a. *M/s. Saro International Freight System Vs. Commr. of Cus., Chennai-VIII – 2016 (334) E.L.T. 289 (Mad.)*;
 - b. *M/s. IndAir Carrier Pvt. Ltd. Vs. Commissioner of Customs (General) – 2016 (337) E.L.T. 41 (Del.)*;
 - c. *M/s. Impexnet Logistic Vs. Commissioner of Customs (General) – 2016 (338) E.L.T. 347 (Del.)*.

4. On the other hand, Ld. AR Shri. B. Balamurugan appearing on behalf of the respondent supports the impugned Order.

5. After hearing both sides, we find that the Ld. Advocate is correct in her assertion that the issue of order of revocation more than ninety days

after the submission of the Inquiry Officer's report has been followed in the breach.

6.1 The Hon'ble Madras High Court judgment in the case of **M/s. A.M. Ahamed & Co. in W.P. No.30884 of 2013 dated 19.08.2014** has *inter alia* held as under :

"20. The time limit prescribed in Regulation 22 (1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20 (2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22 (1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 08.05.2010 with a copy marked to the first Respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days.

23. Relying upon the decision of the Supreme Court In *Sambhaji vs. Gangabai* (2009 (240) E.L.T.161 (S.C.)), it is contended by Mr.A.P.Srinivas, learned Standing Counsel for the respondents, that a procedural law should not ordinarily be construed as mandatory. But the said contention is wholly unsustainable, for the simple reason that a period of limitation prescribed by a Rule of procedure, cannot be diluted. The decision of the Supreme Court arose out of the refusal of a Civil Court to accept a Written Statement beyond a period of 90 days stipulated in Order VIII Rule 1 C.P.C. Therefore, the decision taken in such a case cannot be relied upon.

24. Similarly, the decision of the Division Bench of the Delhi High Court, in *Aval Exports vs. Union of India* (2014 (301) E.L.T.14 (Del.)), relied upon by the learned counsel for the respondents, cannot also go to the rescue of the respondents. The case before the Delhi High Court concerned some applications filed for the issue of value based duty free licences in accordance with the Export and Import policy in vogue. The applications were kept pending for some time and eventually, the policy itself underwent a change. When the matter was taken up, it was argued that the applications ought to have been disposed of within the time stipulated. But the said argument was rejected, on the ground that the time prescribed therein was only directory and not mandatory.

25. In the case on hand, it is not the contention of the respondents that the time limit prescribed in Regulation 22 (1) is only directory and not mandatory. It is not even the contention of the respondents that the time limit prescribed in Regulation 22 (1) need not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld."

6.2 We also note that the Hon'ble High Court of Madras, which is the jurisdictional High Court for this forum, in a very recent decision in the case of ***M/s. Carewell Shipping Pvt. Ltd. in W.P.Nos. 26923 and 26934 of 2018 dated 22.11.2018***, has held as under :

"10. Perusal of the above said decisions of this Court and the Delhi High Court would show that the time stipulated under the Regulations for issuing the show cause notice as well as the filing report is not directory and on the other hand, it is mandatory. No other contra decisions are placed before this Court by the learned counsel for the respondents. Even the decision, which he sought to rely made in W.P.Nos.19312 and 19313 of 2016 dated 13.07.2016, is not relevant to the present facts and circumstances, since in that case this Court has considered the question as to whether the respondent therein had sufficient power to sustain the license invoking Regulation 19(1) of the Regulations. In this case, the petitioner has raised the issue on the time limit fixed under Regulation 20(5) and not 19(1). When the facts placed before this Court are very clear that the report itself was prepared and filed beyond 90 days as statutorily required and when the decision of this Court and the Delhi High Court clearly indicate that such time limit fixed is mandatory, this Court is of the view that the report so filed beyond the period of 90 days cannot be considered as a valid report and consequently further proceedings cannot be allowed to go as a follow up action.

11. Regulation 20(5) contemplates that the Commissioner shall furnish the copy of the report to the customs broker and shall require the customs broker to submit their reply within 30 days against the said report. Regulation 20(7) contemplates that the Commissioner shall after considering the report of the inquiry officer and the representation of the broker, pass such orders, as he deems it fit either revoking the suspension order or imposing penalty within 90 days from the date of submission of the report. As this Court has already found that the very filing of the report was beyond the period of 90 days as required under Regulation 20(5) and thus taken the view that the Commissioner of Customs is not entitled to proceed further under Regulations 20(6) and 20(7) as stated supra, the impugned show cause notice cannot have legs to stand any more, as naturally it has to fall on its own, in view of the lapse committed by the Officers as stated supra, as the inquiry report, pursuant to the issuance of the show cause notice, was admittedly filed beyond the prescribed period of limitation.

12. It is claimed by the Revenue that the petitioner is an habitual offender and therefore, the proceedings are rightly initiated against them. This Court is not inclined to go into such allegation against the petitioner, as this Court is inclined to interfere with the impugned proceedings only on the ground of limitation, as discussed supra. If the petitioner is an habitual offender, as alleged by the Revenue, it is not known as to what prevented the concerned authorities in proceeding against the petitioner by following the mandatory requirements contemplated under law. When there is a lapse on the part of the concerned authority in not making the report within the time stipulated which prevents further proceedings, the Revenue has to blame itself for such lapse, especially when the Courts have held that the period of

limitation prescribed under the Regulation, as discussed supra, is mandatory.

13. Considering all the above facts and circumstances, this Court is inclined to set aside the impugned show cause notice dated 13.04.2018. Accordingly, W.P.No.26923 of 2018 is allowed and the impugned show cause dated 13.04.2018 is set aside."

6.3 The decision of CESTAT, Chennai in the case **of M/s. Elite Shipping Services Vs. The Commissioner of Customs, Tuticorin vide Final Order No. 43106/2018 dated 05.12.2018** relied upon by the Ld. Advocate for appellant will also apply on all fours to the facts of this case. The said Tribunal order had placed reliance on the judgements of the Hon'ble High Court of Delhi in *M/s. IndAir Carrier Ltd. (supra)* and *M/s. Impexnet Logistic (supra)*. The relevant portion of the order in the case of *M/s. Elite Shipping Services (supra)* is reproduced as ready reference :

"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)."

6.4 We also find that there are umpteen number of decisions which have consistently taken the view that mere discrepancy in obtaining authorization from a client is not sufficient to revoke the licence or that absence of physical verification of the importer is also not a sufficient ground for revocation of licence. For example, the Tribunal decision in the case of ***M/s. P.P. Dutta Vs. Commissioner of Customs, New Delhi - 2001 (136) E.L.T. 1042 (Tri. – Del.)*** which has also been relied upon by the Tribunal in the case of ***M/s. Dominic & Co. Vs. Commissioner of Customs (G), Mumbai – 2013 (296) E.L.T. 494 (Tri. – Mum)*** and ***M/s. Falcon Air Cargo & Travel (P) Ltd. Vs. Commissioner of Cus., New Delhi – 2002 (141) E.L.T. 284 (Tri. – Del.)***

7. In the circumstances, we find that the order of revocation cannot be sustained not only on merits, but also on the ground of transgression of the

mandatory time limit prescribed in the regulation. The impugned Order cannot survive and will require to be set aside, which we hereby do.

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

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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