

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40456 of 2024

(Arising out of Order No.01/2024 dated 21.05.2024 passed by the Principal Commissioner of Customs (General), Chennai Customs Zone, Custom House, No.60, Rajaji Salai, Chennai 600 001.)

M/s.V.J.P. Shipping India Pvt. Limited **Appellant**
1st Floor, No.105, Sudhathirapuram,
Thangal, Thiruvottiyur,
Chennai 600 019.

VERSUS

The Commissioner of Customs ... **Respondent**
(General)
Customs House, 60, Rajaji Salai,
Chennai 600 001.

WITH

Customs Appeal No. 40457 of 2024

(Arising out of Order No.01/2024 dated 21.05.2024 passed by the Principal Commissioner of Customs (General), Chennai Customs Zone, Custom House, No.60, Rajaji Salai, Chennai 600 001.)

M/s.K.Y.P. Logistics India Pvt. Limited **Appellant**
1st Floor, KYP Towers,
S.N. Chetty Street, 8th Lane,
Kasimedu, Royapuram,
Chennai 600 013.

VERSUS

The Commissioner of Customs ... **Respondent**
(General)
Customs House, 60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri N. Viswanathan,, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.41570-41571/2024

DATE OF HEARING : 28.11.2024
DATE OF DECISION :09.12.2024

Per: Shri P. Dinesha

These appeals are filed against Order No.01/2024 dt. 21.5.2024 by the Principal Commissioner of Customs (General), Chennai Custom House, Chennai, whereby the Principal Commissioner has ordered the "continuation of suspension of license issued under Regulation 16 (2) of Customs Broker Licensing Regulations (CBLR), 2018".

2. Heard Shri N. Viswanathan, Ld. Advocate for the appellants and Smt. O.M. Reena, Ld. Additional Commissioner for the respondent.

3. The contentions of Ld. Advocate are summarized below :

- The imports were in October and November 2022 wherein the violation/s were alleged, but the first

order of suspension was passed on 23.04.2024 which itself is beyond the time frame provided under Regulation 17 of CBLR.

- The first show cause notice dt. 05.10.2023 issued under Regulation 17 (1) *ibid* does not whisper about any offence report.
- In the impugned order, the Commissioner has concluded that the appellants had violated various sub-regulations of Regulation 10 *ibid* even before holding any enquiry as mandated under the said Regulation.
- In so far as the second appellant is concerned, they did not even file any Bill of Entry and therefore the impugned order is clearly without any basis.
- The impugned order has resulted in affecting the appellants' livelihood including the employees and their respective families.
- Till date, the Revenue has not furnished any enquiry report and therefore the impugned order of continuation of suspension is not proper or in accordance with law.

4. In view of the above, Ld. Advocate would request for setting aside the impugned order and allowing the appeals to continue their business till the enquiry report is filed and thereafter till the completion of the proceedings in terms of CBLR.

5. *Per contra*, Smt. O.M. Reena, Ld. A.R supported the findings in the impugned order. She also filed written submission wherein she has mainly contended on merits.

6. In his rejoinder, Shri N. Viswanathan would contend that the Revenue has issued another show cause notice dt. 27.06.2024 whereby the Principal Commissioner has repeated the allegations made out in the earlier SCN dt. 05.10.2023 and also would contend that without there being any finality as to the proceedings as prescribed under CBLR, the continuation of the suspension of license is very much harsh on the appellant.

7. We have heard the rival contentions and perused the documents placed on record. We find that the proceedings before the lower authorities is in a preliminary stage and hence, we do not propose to get into the merits of the case and give any finding on merits. Hence, the only issue that we could decide is, "whether the impugned order dt. 21.05.2024 whereby the continuation of suspension was ordered, is sustainable?"

8. We find that only a few dates are relevant for our understanding. The dates of Bills of Entry / import is not coming out from the documents placed on record. However, para-3 of the SCN dt. 05.10.2023 indicates that during the course of investigation, statement of Ms. Starlina was recorded on 11.01.2023. The first show

cause notice, as indicated above is issued on 05.10.2023 and from the said SCN, we do not find any mention of any investigation or offence report. In the said SCN, the Assistant Commissioner of Customs (Chennai III) is shown to have been appointed as the Inquiry Officer.

9. The Inquiry report by the said Asst. Commissioner is dated 03.07.2024 and going by the covering letter, copy of the same was furnished to the appellant on 24.07.2024. In terms of Regulation 17 (7), it is for the Principal Commissioner or the Commissioner of Customs, as the case may be, to pass such orders as he deems fit either revoking the suspension of license or revoking the license of the Customs Broker. Hence, it is for the Principal Commissioner to proceed with the mandate prescribed under Regulation 17 (6).

10. The Appellant claims to have suffered both personally as well as in its business. The CBLR prescribes a time-frame within which, prescribed authority should take action for any alleged violation/s of any of the Regulation/s under the same. It is the case of the Appellant that for an alleged violation of the import made in October/November 2022, the authorities should have completed the proceedings within the permissible 90+90+90 days, however, it has been more than nearly 2 years and the only action taken by the authority is the suspension of license which has seriously affected the livelihood of not only the appellant, but also the employees working under the appellants and that the

continuation thereof of the suspension of licenses has only aggravated their misery.

11. We have very carefully gone through the documents made available before us by both the parties; the revenue may be having in its possession some documents/evidences regarding or indicating the history of similar violations by the appellants but, nevertheless, such infringements or violations has not culminated in any action by way of punishment as prescribed under the CBLR and hence, the alleged background/history stands not proved. Therefore, such a background or history of the appellants, as long as 'not proved' would not be of any avail or of any consequence insofar as the present – alleged violations are concerned.

12. It is not the intention of the legislature to jeopardize the business and his livelihood of CHA on account of any inaction or delay thereof on the part of the Revenue authority and thereby result in the deprivation of his livelihood. He may have employed few personnel who are also dependent on the appellants for their livelihood. Hence, we are of the view that the appellants before us cannot be left remedy-less because of the reason of inaction, for various reasons, known only to the Revenue. It may be that the CHA before us has a case since the time-frame has not been adhered to by the authorities, but in any case, that is not the issue before us now in this Appeal. If the version of the appellants is correct, then they may have a statutory remedy. Further, from the very facts placed on record, though we find that there is something more than what

meets the eye since, admittedly, the Revenue has chosen to be inactive in not pursuing with or adhere to the CBLR insofar as the periods of limitation are concerned, but again, that is not the issue before us. Suffice it, therefore, to say that the inaction on the part of the Revenue has caused sufficient miscarriage of justice insofar as the appellants in the present case are concerned. Moreover, as pointed out by the Id. Advocate, the show-case notice issued in June 2024 may be a device to extend the time-frame prescribed under the CBLR, but in any case, even that cannot come in the way of the appellants continuing with their business, with their license intact, until the proposed proceedings initiated is taken to its logical end. Therefore, we are the view that the balance of inconvenience is clearly with the appellants and hence, the Revenue would not in any way be affected if the order of suspension of their license set aside, thereby permitting them to continue with their business. Accordingly, the order suspending the license of the appellants is set aside. The authority below can always go ahead since there has been an initiation of a proceedings, and conclude the same in accordance with law thereafter.

13. Resultantly, we set aside the impugned order. Appeals are disposed of as indicated above.

(Order pronounced in the open court on 09.12.2024)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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