CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51940 of 2019 [DB]

[Arising out of Order-in-Original No. 57/MK/POLICY/2019 passed by the Commissioner of Customs (Airport & General), New Delhi]

M/s. M.M. Logistics **...Appellant**
J-478, Arpan Vihar, Jaitpur, Badarpur,
New Delhi-110044.

VERSUS

Commissioner of Customs
(Airport & General), New Delhi **...Respondent**
New Custom House, Near IGI Airport,
New Delhi.

APPEARANCE:

Shri Devesh Tripathi, Shri P. Pathak & Shri M.N. Dubey, Advocates for the Appellant
Shri. Rakesh Kumar, Authorised Representative for the Respondent

Coram:HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION : **10/02/2020**

FINAL ORDER No. 50635/2020

Per: CJ MATHEW:

This appeal of M/s MM Logistics challenges the revocation of custom broker license no. R-34/Del./CUS/2016 (valid upto 27th December 2025) by recourse to regulation 14, read with regulation 17, of Customs Brokers Licensing Regulations, 2018 in order No.57/MK/POLICY/2019 dated 28th April, 2019 of Commissioner of Customs (Airport and General), New Delhi.

2. The appellant was proceeded against pursuant to filing of bill of entry no.786104/13.12.16 on behalf of M/s Star Enterprises for the import of 'cosmetics', 'electronic goods' and 'measuring tapes'which, upon examination on 6th March, 2017 in the presence of representatives of intellectual property rights owners, was found to be spurious; 'cosmetics'also required clearance from the Assistant Drug Controller for import, the branded goods required clearance from the representatives of intellectual property rights owners. and 'measuring tapes' required prior registration with the legal metrology authorities. Admittedly, none of these were available at the time of filing of the bill of entry. The premises of the appellant was consequently searched on 8th March 2017 and, though no incriminating documents were recovered, the statement recorded on 9th March, 2017 culminated in notice dated 5th September 2017 under section 124 of Customs Act, 1962 being served on the importer as well as on the appellant herein. The proceedings leading to the impugned order commenced on 31st October 2018 with the serving of memorandum of charges and appointment of Inquiry Officer for alleged contravention of regulation 10(d), 10(e) and 10(m) of Customs Brokers Licensing Regulations, 2018. The report of the Inquiry Officer was received on 28th January 2019 following which the appellant

herein, after being placed on due notice,was deprived of his licence.

3. Learned Consultant for the appellant contests the proceedings as well as the findings by drawing attention to the elapse of time between the issuance of show cause notice under Customs Act, 1962 on 5th September 2017 and the receipt of charge sheet on 31st October 2018. It was also pointed out that even though there is no prescribed format for the offence report contemplated in Customs Brokers Licensing Regulations, 2018, it was erroneous on the part of Commissioner of Customs to construe the letter enclosing the show cause notice, received on 6th August 2018,to be the offence report and merely to overcome the deadline specified in regulation 20 of Customs Broker Licensing Regulations, 2018. It is also contended by him that the alleged deviation from obligation, as recorded in the findings of the Inquiry Authority and affirmed by the Commissioner of Customs, was not consistent with the enumeration in the relevant regulation. Our attention was also drawn to instruction no.450/11-2011-CUS-IV dated 25th February 2011 of the Central Board of Excise & Customs which,while taking note of goods being cleared without obtaining approval of the Drugs Controller and directing strict compliance, makes it apparent that 'out of charge' of such goods should be withheld pending receipt of such approval.

4. Learned Authorised Representative submits that,as the

show cause notice was the sum and substances of offence report, the appellant was without any justification to allege that there was a delay in compliance with the requirement to serve the memorandum of charges within the stipulated deadline. It was also submitted that, very often, it is owing to less than diligent handling of import on the part of customs brokers that leads to delay in completing investigation. He, therefore, argued that the plea of leniency is not consistent with a proper administration of the import export system.

5. Though proceedings against the appellant was initiated in connection with alleged irregularities in one import, the disposal of an appeal against revocation of license does not permit us the latitude to render a finding on the allegations pertaining to the seizure/confiscation of goods. We are, therefore, constrained to restrict ourselves to the correctness, or otherwise, in revoking of the customs broker license under the Regulation concerned.

6. The charges leveled against the appellant are that the mandated advise was not forthcoming, that the appellant had filed the bill of entry without insisting upon the various prescribed clearances and that speed and efficiency,prescribed by the regulations, was also lacking.

7. It is seen from a perusal of the Regulations that the role of the customs broker is to act as an agent and to file the necessary papers for facilitatingclearance. Regulation 10 imposes certain obligations on such customs brokers. The

Regulation pertaining to rendering of proper advise has been wrongly held to have been breached as the Inquiry Report, along with various evidences, point out that such advise was indeed furnished to the importers; the non-compliance with such advise on the part of the importer did not, of itself, suffice for the customs broker to desist from acting for the importer. Furthermore, the furnishing of documents, *viz.*, clearance from brand owners, registration with legal metrology authorities and approval of the Drug Controller,are only required at the time of clearance of the goods. It is not prescribed in any part of the statute, or regulations framed there-under, that these documents were required to be filed along with the bill of entry. Admittedly, they were not; but such deficiency was not illegal and could have been rectified before 'out of charge' was granted. The allegation that the appellant did not demonstrate the desired level of diligence and efficiency is too vague, and lacking in objectivity, for ascertainment without specificity. Moreover, neither the Inquiry Authority nor the Commissioner of Customs had taken it up on themselves to scrutinize the documentary and oral evidence for arriving at such a conclusion.

8. Above all, we are concerned that such proceedings should comply strictly within the time-lines prescribed in law. The failure to do so casts a taint on the proceedings as one that was either not motivated by public interest or lacking *gravitas* expected when depriving a customs broker of the means of livelihood.

9. The decision of the Hon'ble High Court of Delhi in *Harjeet Singh Johar v. Commissioner of Customs (General) [2018 (361) ELT 731 (Del.)]* holding that

> *'15. In view of the aforesaid position, we record that the suspension order dated 31-3-2017 was based upon the offence report, and therefore the show cause notice under Regulation 20, dated 14-7-2017, would be clearly barred by the limitation as it was issued more than 90 days after the offence report was submitted.*
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> *16. We accordingly allow the present writ petition and quash the show cause notice dated 14-7-2017 initiating proceedings under Regulation 20 of the 2013 Regulations, as it has been issued after 90 days from the date of receipt of offence report. The order confirming suspension dated 12-6-2017 would therefore become ineffective and infructuous.'*

is germane to the present dispute.

10. As submitted by Learned Consultant, the starting point for revocation proceedings, under the Customs Broker Licensing Regulations, 2018, is the receipt of offence report intended to bring breachesto the knowledge of the licensing authority. We see from the records that, as early as 6th April 2017, the Tughlakabad Inland Container Depot Commissionerate had drawn the attention of Commissioner of Customs (Airport & General), Delhi to the suspect import. It would appear from the letter dated 24th April, 2018 of the latter to the former that repeated reminders did not elicit the facts required to justify initiation of proceedings under Customs Brokers Licensing Regulations, 2018. It would also appear that it was only the

show cause notice issued to the appellant herein, as well as the importer, under section 124 of Customs Act, 1962 which provided the respondent herein with the material to come to a conclusion that the proceedings were justified. We take note that the said show cause notice preceded the commencement of inquiry by more than a year. Even though attempted to be justified with the explanation that the said notice was received at the office of the respondent only on 6thAugust 2018, we are unable to concur as the only addition thereto is a covering letter. Owing to the existence of prior intimation the notice is also an untenable alternative as the trigger that is the express requirement for commencement of proceedings under Customs Broker Licensing Regulation, 2018. Hence, the show cause notice,even if accepted as 'offence report', cannot be considered as the point at which proceedings should have been commenced. On the other hand, the explanation inserted to define 'offence report' in the Customs Brokers Licensing Regulations, 2013 includes *primafacie* framing of charges of alleged acts of commission or omission which, by no stretch, a show cause notice under section 124 of Customs Act, 1962 can pretend to be superior to any other communication. It would, therefore, be appropriate for the original information furnished by the Inland Container Depot Commissionerate at Tughlakabad, specifically pointing out the role of the customs broker, to be the 'offence report' within the meaning of the Regulations. The said offence report dated 6thApril, 2017 was not acted upon until long after proceedings under section 112 of Customs Act, 1962 were initiated against the appellant herein. The time lines prescribed in Regulation, 17 of Customs Broker Licensing Regulations, 2018 appear to have been complied with in its breach. This is not consistent with the mandated prescription in the Regulations.

11. Considering the merit in the contentions of the appellant, as well as the plea of non-compliance with statutory time lines, we find the impugned order to be contrary to law. Accordingly, we set it aside and allow the appeal.

[*Operative part pronounced in the open Court]*

(**Anil Choudhary)**
Member (Judicial)

(C J Mathew)
Member (Technical)

Anita