IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 20.12.2016
Date of Pronouncement:___05.01.2017__

For Approval & Signature of:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Appeal No. C/52577/2016-CU [DB]
[Arising out of Order-in-Original No. 59-SM-SUSPENSION-POLICY-2016 dated16.08.2016 passed by the Commissioner of Customs (General), New Delhi]

M/s. Indo Cargo Trading Services — Appellant

Vs.

C.C.(General), New Delhi — Respondent

Appearance
Sh. Bharat Bhushan Sharma, Advocate - For the appellant
Sh. K. Poddar, DR - For the respondent

CORAM: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No.___50138______/2017, dated :_05.01.2017

Per Mr. V. Padmanabhan :

The present appeal has been filed against the order dated 16.8.2016 passed by Commissioner of Customs (Gen), New Customs House, IGI Airport, New Delhi. The appellant is a CHA licencee issued by Commissioner of Customs. Additional Commissioner, SIIB Delhi investigated certain alleged irregularities committed by the appellant in respect of certain shipping bills filed by them wherein the exporters were found to be bogus and through his letter dated 28.06.2016, informed the Commissioner (Customs). After receipt of the above letter dated 28.06.2016, the Commissioner of Customs, Delhi issued an order dated 21.7.2016 suspending the appellant's licence under Regulation 19(1) of CBLR, 2013. This suspension was further confirmed under Regulation 19(2) by the said Commissioner on vide impugned order dated 16.08.2016. The present appeal has been filed against the orders of Commissioner of Customs, New Delhi confirming suspension of the licence of the appellant.

3. The impugned order has been challenged by them on time limit as well as on merit. On time limit, the appellant's argument is that the Commissioner of Customs, Delhi has failed to observe the time limits strictly prescribed under CBLR, 2013. On merits, the appellant has denied the allegation of contravention of the provisions of CBLR, 2013.

4. Heard Shri Bharat Bhushan, ld. Advocate appearing for the appellant and Shri K. Podder, ld. Departmental Representative for

Revenue. The learned Advocate submitted a copy of the Show Cause Notice issued by the Commissioner Customs dated 1.11.2016 proposing revocation of their licence.

5. Under CBLR, 2013, the Regulation 19 empowers the Commissioner to order suspension of a custom broker and the procedure which needs to be followed in this regard is spelt out clearly under Regulation 20. Time schedule strictly prescribed under CBLR are as follows:-

> *"22. Procedure for suspending or revoking licence under Regulation 20-*
>
> *(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
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> *Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.*

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry recording his

findings and submit his report within ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5).

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under Section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of Section 129 of the Act."

The time schedules prescribed under CBL Regulations, 2013 are as follows:-

CBLR, 2013	Purpose	Specified Time Period
20(1)	Issuance of Show Cause Notice to the CHA/CB by the Commissioner.	Within 90 Days from the date of receipt of an offence report.
20(5)	Preparation of Report of Inquiry by the Deputy/ Assistant Commissioner.	Within 90 Days from the date of issuance of the show cause notice.
22(7)	Passing of order by the Commissioner.	Within 90 Days from the date of submission of the Inquiry Report.
TOTAL DURATION - 270 DAYS OR 9 MONTHS		

It is seen from the records that Commissioner of Customs, Delhi received the intimation of irregularities issued by Additional Commissioner of Customs, SIIB on 28.06.2016. This may be considered as the date of receipt of Offence Report. Regulation 20(1) contemplates issue of Show Cause Notice to the customs broker by the Commissioner within a period of 90 days from the date of receipt of Offence Report. The issue of Show Cause Notice is to be followed within a period of 90 days by submission of Inquiry Report by Asst. Commissioner/Dy. Commissioner and ultimate passing of the order by the Commissioner within a period of 90 days from the date of submission of Inquiry report.

6. The Ld. Counsel for appellant has brought to our notice that the initial Show Cause Notice under Regulation 20 has been issued only on 1.11.2016 even though the offence Report was

received by the Commissioner of Customs, Delhi on 28.6.2016. Ninety days period has already expired on 27.09.2016.

7. Hon’ble High Court of Madras, in the case of A.M. Ahamed & Co. Vs. CC (Imports), Chennai [2014 (309) ELT 433 (Mad.)] has 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 8.5.2010 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.”*

Hon'ble Madras High Court has further emphasised the observance of time limits strictly under the CHALR, 2004/CBLR, 2013 in the case of Saro International Freight System Vs. CC, Chennai [2016 (334) ELT 289 (Mad.)]. The Hon'ble High Court in para 28 of the above judgement has held as under:-

> *"28. ……….. It is pertinent to mention here that the CBLR, 2013 have replaced the CHA Regulations. The CHA regulations did not have any time limit to complete the proceedings. Therefore, by a Circular 09/2010 dated 8.4.2010, the necessary to include a time limit for initiating action was addressed by the Board after filed inspection and by an notification dated 8.4.2010, amendments prescribing time period for initiating action and completing proceedings was made. The same was given effect by notification dated 20.1.2014. Whereas, under CBLR, 2013 having found the necessity to prescribe a period, the Central Board, the statutory authority had included the same in Regulations itself, when they were brought not in force. Therefore, when time light is prescribed in Regulations, which empowers action under Regulation 18 by following the procedure in Regulation 20(1), the use of the term "shall" cannot be termed as "directory". Under such circumstances, the rule can only be termed as " Mandatory".*

8. The ratio of the above decisions that the time limits prescribed are to be mandatorily followed has also been followed by this Tribunal in several decisions such as-

(i) 2016-TIOL-157-CESTAT-DEL - M/s Altharva Global Logistics vs. Commissioner of Customs, New Delhi

(ii) ***2015-TIOL-2467-CESTAT-DEL- M/s Lohia Travels and Cargo vs. Commissioner of Customs (General), New Delhi.***

(iii) ***2016-TIOL-524-CESTAT-DEL - M/s Zen Cargo Movers Pvt. Ltd. vs. Commissioner of Customs, New Delhi.***

9. We find the Hon'ble High Court decisions cited above are directly dealing with CBLR and sanctify time limit under the regulation. As such the order of the lower authority which was issued without adhering to the time schedule is liable to be set aside on these grounds. Accordingly, we set aside the impugned order of the original authority and allow the appeal.

[Pronounced in the Open Court on 05.01.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

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