CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51308 of 2016

(Arising out of Order-in-Original No. 05/SM/POLICY/2016 dated 18.02.2016 passed by the Commissioner of Customs (General), New Delhi)

DATE OF HEARING : 24.01.2017
DATE OF DECISION : 24.01.2017

M/s Vetri Impex .... Appellants
(Rep by Sh. Jatin Mahajan, Adv.)

VERSUS

CC, New Delhi .... Respondent
(Rep. by Sh. K. Poddar, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50525/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 05/SM/POLICY/2016 dated 18.02.2016 passed by the Commissioner of Customs (General), New Delhi.

2. The brief facts of the case are that the assessee-Appellants is a Customs House Agent (CHA) whose licence was issued from Delhi to work at Mumbai Port. Some consignments of the

exporter pertaining to the cloth by showing over-valuation were cleared by the CHA. Accordingly, Mumbai Customs Office vide letter dated 20.03.2015 forwarded the show cause notice dated 12.01.2015 to the Delhi Customs Office for taking suitable action. On the basis of the material received from the Mumbai Customs Office, the Delhi Customs Office issued another show cause notice dated 26.06.2015. In the instant case, the inquiry report was received on 28.10.2015. After that the competent authority vide order dated 18.02.2016 has revoked the licence of the assessee-Appellants. Being aggrieved, the assessee-Appellants has filed the present appeal.

3. With this background, we have heard Shri Jatin Mahajan, learned counsel for the assessee-Appellants and Shri K. Poddar, learned DR for the Department.

4. After hearing both sides and on perusal of the record, it appears that the inquiry report is dated 28.10.2015 and revocation order was passed on 18.02.2016, which is beyond the period of 90 days. It may be mentioned that that Regulation 20(1) of Customs Brokers Licensing Regulation, 2013 states –

> *"The Principal Commissioner or 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 or impose penalty and requiring the said Custom House Agency to submit within thirty days, to the Deputy Commissioner of*

Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Custom House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs."

5. From the above, it appears that limitation was 90 days. In the instant case, the said limitation was violated as more than 90 days were taken. The above proceedings appear to be time barred. Further it may be mentioned that after issuing show cause notice an inquiry report was submitted on 28.10.2015 and the impugned Order was passed on 18.02.2016. Thus, it appears that in the instant case the impugned order is time barred as it is beyond ninety days.

6. It may be mentioned that once the action is time barred, no order can be passed by the Commissioner for revoking licence as per the ratio laid down in the following cases :

(i) **C.C. (Seaport/Import) Chennai vs. Sanco Trans Ltd.** – 2016 (334) ELT 274 (Mad.);

(ii) **Saro International vs. C.C. Chennai –VIII** – 2016 (334) ELT 289 (Mad.)

(iii) **A.M. Ahmed & Co. vs. C.C.E. (I), Chennai** – 2014 (309) ELT 433 (Mad.);

(iv) **Anubhav Cargo Movers v. CC, New Delhi** Final Order No.C/A/52967/2016 – CU (DB) dated 3.82016; and

(v) **M/s Kamal Schgal vs CC, New Delhi (Import & General)**- Final Order No.C/A/ 51959/2016 –CU (DB) dated 1.6.2016

7. In view of the above settled legal position and by considering the totality of the facts, we set aside the impugned order and allow the appeal.

8. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay