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

COURT NO. III

DATE OF HEARING : 28/02/2017.
DATE OF DECISION : 28/02/2017.

Customs Appeals No. 51878 and 51897 of 2015

[Arising out of the Order-in-Original No. 07/NK/POLICY/2015 dated 09/02/2015 passed by The Commissioner of Customs (General), New Custom House, New Delhi.]

M/s Leo Cargo Services Pvt. Ltd. — Appellant

Versus

CC, New Delhi (Import & General) — Respondent

and

CC, New Delhi (Import & General) — Appellant

Versus

M/s Leo Cargo Services Pvt. Ltd. — Respondent

Appearance

Ms. Vidushi Shubham, Advocate – for the appellant/respondent.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent/appellant.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52014-52015/2017 Dated : 28/02/2017

Per. B. Ravichandran :-

Both Custom House Agent and Revenue are in appeal against the same original order dated 09/02/2015 of

Commissioner of Customs (General), New Custom House, Airport, New Delhi. The CHA appellant is licensed to operate in the custom house for clearance of import/export cargo. Based on certain investigation conducted by the officers of Custom Department, proceedings were initiated against the CHA appellant both under the provisions of Customs Act, 1962 and under the provisions of Custom House Agents Licensing Regulation 2004/ Customs Broker Licensing Regulation (CBLR) 2013. In the present appeal, we are concerned with the proceedings under CBLR, 2013 only. On conclusion of the adjudication of the show cause notice dated 08/01/2014, the Commissioner vide his impugned order ordered forfeiture of an amount of Rs. 50,000/- from the security deposit of CHA appellant, in terms of CBLR, 2013. A CHA appellant is against this order. The Revenue also filed appeal on the ground that the Commissioner should have revoked the Customs Broker License in view of the violations committed by the CHA/Broker.

2. The learned Counsel for the CHA appellant submitted that the whole proceedings against them resulting in the impugned order is legally not sustainable as the same is in violation of provisions of CBLR, 2013. She submitted that in terms of Regulation 20 of CBLR, 2013, time limits have been prescribed to complete each stage of proceedings. As per the said regulation the enquiry report should be submitted within 90 days from the date of issue of show cause notice to the CHA. In the present case, the show cause notice under CBLR was issued on

08/01/2014 and the enquiry officer has submitted his report only on 11/11/2014. As such, the enquiry report, which was submitted after more than 10 months after issue of show cause notice, cannot form basis for any legal proceedings. The proceedings themselves are invalid and beyond jurisdiction. She relied on various decided cases by the Tribunal and Hon'ble High Courts of Delhi and Madras.

3. The learned AR reiterated the findings in the impugned order. On the appeal filed by the Revenue he submitted that when the violations by the CHA are established, the Commissioner should have revoked the license issued. The Revenue is aggrieved by the impugned order to the extent that the Commissioner did not act in terms of his own finding.

4. We have heard both the sides and perused the appeal records. The CHA appellant raised legal, preliminary objection regarding the legality of the proceedings resulting in the impugned order. As such, there is no detailed submission on merits of the case. We take up the legal objection against the impugned order. We note that, admittedly, the enquiry report which is to be submitted within 90 days of issue of show cause notice in terms of Regulation 20 of CBLR has been submitted, in the present case, after 10 months. On this non-adherence of time limit alone the proceedings are to be held as invalid. We note that, by now, it is a well settled legal position that the time limits prescribed in the Regulations are mandatorily to be followed.

Failure to adhere to the said time limits will make the proceedings without jurisdiction and invalid. In this connection, we refer to final order No. 55604 of 2016 dated 05/12/2016 of the Tribunal in the case of **M/s B.N. Gandhi vs. CC, New Delhi**, final order No. 53222/2016 dated 17/08/2016 in the case of **Rupinder Singh vs. CC, New Delhi (Import & General)** and final order No. 52757/2016 dated 03/08/2016 in the case of **M/s Rakesh Sharma vs. CC, New Delhi (I&G)**. The Tribunal in these decisions relied upon their own earlier decisions and the decisions of Hon'ble Delhi High Court and Hon'ble Madras High Court. The observation of the Tribunal of **M/s Rakesh Sharma** (supra) is as below :-

> "4. …… However, the enquiry report in terms of Regulation 20 (5) shall be prepared and submitted within 90 days form the date of issue of such show cause notice. In the present case admittedly the enquiry report was submitted on 08/5/15 which is beyond 90 days prescribed under the Regulation.
>
> 5. We note that it is a well settled legal position that when statutory time limits are prescribed under the law the same has to be strictly adhered to. The legal position in respect of time limits prescribed under Regulation 20 has been repeatedly held to be mandatory in nature. Failure to adhere the same will make the proceedings invalid. Reference can be made to the Hon'ble Delhi High Court decision in **Indair Carrier Pvt. Ltd. vs. CC (General) and anr.** Reported in **2016 – TIOL – 1111 – HC – DEL – CUS** which is again reiterated by the High Court in their recent decision dated 20/7/2016 in **Overseas Air Cargo Services – 2016 – TIOL – 1531 – HC – DEL – CUS**. The

said legal position has been affirmed by the Hon'ble Madras High Court in various decisions. Reference can be made to the latest decision of Hon'ble Madras High Court in **Saro International Freight System – 2016 – 334 – E.L.T. 0289 (Mad.)**. The Tribunal has held in various cases on similar lines. Reference can be made to the recent decision in **Ambika Enterprises – 2016 – TIOL – 1720 – CESTAT – DEL.** and final order No. 52107 of 2016 dated 08/6/2016 in **Vinod Tomar vs. CC (I&G), New Delhi**.

6. In view of the finding that the enquiry report has not been submitted within 90 days, we are not examining the merit of the case. As such, the impugned order is set aside. The appeal is allowed".

5. In view of the settled legal position, as discussed above, we find that the impugned order cannot be legally sustained. Accordingly, the same is set aside. The appeal by CHA appellant is allowed. Since, the impugned order itself is set aside the appeal by Revenue is dismissed.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK