IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/Misc/50140/2017 C/50260/2017-Cu(DB)

[Arising out of Order-in-Original No. 04/SM/P/2017 dated 23.01.2017, passed by the Commissioner of Central Excise, New Delhi]

M/s K.R. Express (P) Limited ....Appellant

Vs

C.C.- N. Delhi ....Respondent

Appearance:
Sh. Pradeep Jain, Advocate for the Appellant
Sh. K.Poddar, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 09.03.2017

Final ORDER NO. 52632 /2017-CU[DB]

Per V. Padmanabhan

The present appeal stands filed against the order in Commissioner (Customs), New Delhi dated 23.01.2017 by which the CHA licence of the appellant stands revoked in terms of CHA Regulation and the security deposit of Rs 75,000/- furnished by them stands forfeited.

2. The ld. Advocate appearing for the appellant submit that the Show Cause Notice proposing revoking of CHA licence was issued

on 29.07.2016, which was followed by the report of the enquiry officer dated 26.10.2016 and the ultimate order revoking the CHA licence was issued on 23.1.2017. The submitted that the issue started with the DRI taking up investigations of some under invoiced imports. In this connection, the DRI informed the Commissioner of Customs on 12.06.2013 about the investigations which were taken up. This was taken cognizance of by the Commissioner (Customs) and the appellant's CHA licence was suspended on 04.07.2013 under Regulation 20(2) of CHALR, 2004. It is his submission that the report of DRI dated 12.06.2013 has to be considered as the offence report. Since, the Show Cause Notice proposing revocation was issued only on 29.7.2016, which was more than three years after the receipt of offence report, the SCN is time barred in terms of Regulation 22(5). Accordingly, he submits that the impugned order is required to be set aside as has been held by various High Courts.

3. The ld. DR appearing for the Revenue supports the impugned order. His submission is that the report of DRI dated 12.06.2013 is not to be considered as the offence report as it was in the nature of a preliminary report. The offence against the importers as well as the CHA got crystallized only with the issue of SCN dated 07.04.2016 by the DRI. Hence, his submission is that, there is no contravention of the time limits of CHALR, 2004. He further submitted that the offence is of serious nature and hence the impugned order deserves to be upheld.

4. The CHA licensing Regulations, 2004 prescribed procedure for revocation of the licence issued to the Customs Broker. These regulations prescribed very strict time limits for the proceedings to be undertaken against the CHA's. These regulations require that the CHA being proceeded against is required to be issued a Show Cause Notice within a period of 90 days from the date of receipt of offence report, which is to be followed by an enquiry report. In the present case, the alleged offence was brought to the notice of Commissioner (Customs) by DRI as early as 12.06.2013. However, the SCN proposing revocation was issued only on 29.07.2016. The ld. DR has submitted that the report from DRI cannot be considered as the offence report since it was in the nature of preliminary report and the offence gets crystallized only with the issue of SCN by DRI.

5. We note that the Commissioner (Customs) has acted on the basis of the initial report of DRI dated 12.06.2013. In fact the Commissioner (Customs) has proceeded to suspend the CHA licence of the appellant on 14.07.2013 in terms of Regulation 20(2) of CHALR, 2004. This action on the part of Commissioner (Customs) clearly indicates that he had considered the letter of DRI as the offence report. The enquiry report has been finalized only on 26.10.2016, which is more than three years from the date of receipt of offence report.

6. It has been categorically held that violation of time limit prescribed in the CHA Regulations will result in dropping of proceeding against the CHA. This has been held by the **Hon'ble Madras High Court in the case of A.H. Ahmed & Company vs. Commissioner of Customs – 2014 (309) ELT 433 and the Hon'ble Delhi High Court in the case of Overseas Air Cargo Services Vs. Commissioner of Customs (General), New Delhi-2016(340) ELT 119(Del.) and 39(Del.).** The said orders stand followed in catena of decisions. As such, the submission of the ld. Advocate is that the impugned order is liable to be set aside on this short ground itself.

6. In view of the above, we set aside the impugned order and allow the appeal with consequential relief to the appellant. Misc. application also stands disposed of.

[Operative part of the order pronounced in the open court]

Archana Wadhwa
(Member Judicial)

V. Padmanabhan
(Member Technical)