**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI**
**COURT-IV**

**Appeal No. C/52546/2015 -CU (DB)**

[Arising out of the Order in Original No. OIO-53-NK-POLICY-2015 dated 10.04.2015 passed by Commissioner of Customs, New Delhi]

M/s. Entire Logistics Pvt. Limited … Appellant

vs.

Commissioner of Customs, New Delhi … Respondent

and

**Appeal No. C/52794/2015 -CU (DB)**

Commissioner of Customs, New Delhi … Appellant

vs.

M/s. Entire Logistics Pvt. Limited … Respondent

**Appearance**:

Rep. by Shri Somesh Arora, Advocate for the Assessee
Rep. by Shri Govind Dixit, DR for the Revenue

**Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Date of Hearing/ Decision : **29.03.2017**

**Final Order No 52741-52742/2017 –CU (DB)**

**Per Mr. V. Padmanabhan**

The present appeals have been filed challenging the portion of Order-in-Original No. OIO-53-NK-POLICY-2015 dated 10.04.2015 passed by Commissioner of Customs, New Delhi in which the adjudicating authority, in the proceedings initiated under CHALR, 2004, ordered for forfeiting the amount of security deposit of Rs. 50,000/- pertaining to CHA. The Revenue has also challenged the findings in the impugned order and argued that ld. Commissioner has revoked Customs Broker Licence of three other CHAs but has not revoked the licence of M/s. Entire Logistics Pvt. Limited. He has only ordered for forfeiting the security amount deposited. Since the Customs offence was the same, Revenue has argued that M/s. Entire Logistics should also be penalized with forfeiture of CHA Licence.

2. With the above background, heard Shri Somesh Arora, ld. Counsel for the appellant as well as Shri Govind Dixit, ld. DR for the Revenue.

3. Ld. Advocate submitted that disciplinary proceedings have been initiated against them under relevant CHA Regulations. However, the ld. Commissioner has failed to observe the time schedule strictly, as prescribed under the CHALR and hence, the impugned order is liable to be set-aside in respect of M/s. Entire Logistics. He also submitted a written brief along with date chart showing the violation of time-limits. He also relied upon several case laws in his support.

4. Shri Govind Dixit, ld. DR submitted that along with M/s. Entire Logistics, there were three other CHAs involved in committing the customs offence. The enquiry was against all the four CHAs and the impugned order has also been passed in respect of all the four CHAs. Hence, he argued that in terms of the doctrine of severance, the appeal of M/s. Entire Logistics cannot be decided in isolation. Accordingly, he submitted that appeals, if any, filed by other CHAs should also be heard along with the appeal of M/s. Entire Logistics and the Revenue’s appeal.

5. We have gone through the case records. We find that four CHAs were involved in commission of customs offence. Disciplinary proceedings were taken up by the ld. Commissioner against all the four CHAs. Even though

there is a common enquiry report against all the four CHAs, however, the alleged contraventions which are the basis for disciplinary action against each CHA, are distinct and separate. These charges have been confirmed against each CHA keeping in view the role played by them in commission of the alleged customs offence. Further, since the CHA licence for each CHA is distinct and separate, we do not see any infirmity in deciding the appeal filed by M/s. Entire Logistics without reference to the appeals, if any, filed by the other CHAs.

6. The main challenge to the impugned order by M/s. Entire Logistics is on the ground of non-adherence of time-limits which are strictly fixed under the relevant CHA Regulations for regulating the process of disciplinary proceedings. A time limit of 90 days is fixed for issue of show cause notice to CHA from the date of receipt of offence report by the licensing authority i.e. the Commissioner. Further, the enquiry report has to be submitted by the Inquiry Officer within 90 days from the date of show cause notice. The Commissioner is expected to pass the order within 90 days from the date of submission of enquiry report. The relevant dates in the present case are as follows :-

| Date | Event | Time take | Time allowed |
|---|---|---|---|
| 12.01.2010 | Date of detection of offence | 640 days | |
| 14.10.2011 | Date of issue of issue of show cause notice | 3 Years & 31 days | 90 days |
| 19.01.2015 | Date of receipt of enquiry report | 81 days | 90 days |
| 10.04.2015 | Date of order passed by Commissioner. | | 90 days |

From the above table, it is evident that there has been significant delay beyond the permissible limits between the dates of receipt of offence report and date of issue of show cause notice. Likewise, there has been inordinate delay in preparation and submission of enquiry report. From the records, it is seen that delay is on account of change of enquiry officer more than once and thereby, the time limit prescribed under CHA Regulations have been badly violated.

7. Several High Courts while dealing with CHA Regulations have sanctified the time-limits under the Regulations and have held that any violation in the specified time-limits will lead to setting aside the disciplinary proceedings. Such view has been held by the Hon'ble Madras High Court in the case of *A.M. Ahmed & Company vs. CC (Imports), Chennai – 2014 (309) EL 433 (Mad.).* Similar view has been held by the Hon'ble Madras High Court in the case *Saro International Freight System vs. CC (Chennai) – 2016 (334) ELT 289 (Mad.),* and the Tribunal has been consistently following the above decisions in respect of the action taken under CHA Regulations.

8. In view of the above discussions, the order of the lower authority forfeiting the security deposit is set-aside and the appeal is allowed. Consequently, the appeal filed by Revenue is rejected.

[Order dictated and pronounced in the open court]

(**Archana Wadhwa**)
Member (Judicial)

(**V. Padmanabhan**)
Member (Technical)

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