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/DECISION : 24/04/2017.

Customs Appeal No. 50320 of 2017

[Arising out of the Order-in-Original No. 83/SM/POLICY/2016 dated 17/11/2016 passed by The Commissioner of Customs (General), New Customs House, New Delhi.]

M/s Shivam Entertprises   Appellant

Versus

CC, New Delhi   Respondent

Appearance

Shri Jatin Mahajan, Advocate – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53624/2017 Dated : 24/04/2017

Per. S.K. Mohanty :-

The appellant has filed this appeal against the impugned order dated 17/11/2016, wherein the CHA licence was revoked and security deposit furnished by the CHA was forfeited. The submissions of the appellant are that the procedures prescribed in the CBLR, 2013 for revoking the licence has not been properly followed by the authorities in as much as in between the date of show cause notice and submission of enquiry report, the

Department took more than 90 days time, which is not in conformity with Regulation 20 (5) of the CPLR 2013.

2. Heard both sides and perused the records.

3. We find that in the present case, the show cause notice was issued to the appellant on 25/04/2016 and the enquiry report was submitted on 22/08/2016, which is beyond the period of 90 days from the date of the show cause notice. Thus Condition No. (5) in Regulation 20 of CBLR, 2013 has not been followed by the Department for revoking the licence. In this context, the Hon'ble Delhi High Court in the case of **Impexnet Logistic vs. CC (General) – 2016 (338) E.L.T. 347 (Del.)** held that the time limits prescribed in CBLR, 2013 are sacrosanct and mandatory, which and to be strictly followed. The relevant paragraphs in the said judgment are extracted herein below for convenience of reference.

> "7. It is plain that in the case there has been a violation of the time-limits set out in Regulation 20 of the CBLR (corresponding to Regulation 22 of the CHALR). In the decision dated 12th May, 2016 in Cus. AA 25/2015 [*Indair Carrier Pvt. Ltd.* v. *Commissioner of Customs (General)*] [2016 (337) E.L.T. 41 (Del.)] this Court held :
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> > "6. The time-limits in the CHALR, 2004 for issuance of the SCN to the CHA licence holder and completion of the inquiry within 90 days of issuance of such SCN are sacrosanct. The aforesaid time limits were engrafted into Regulation 22 of the CHALR, 2004 by a Notification No. 30/2010-Cus. (N.T.),

dated 8th April, 2010. Simultaneously, the CBEC issued Circular No. 9/2010, dated 8th April, 2010 clarifying the procedures governing the suspension and revocation of CHA licence. In para 7.1 of the said Circular, CUSAA 25/2015 & W.P.(C) 3973/2015 Page 4 of 5 it was noted as under :

"7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of Issue of Show Cause Notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty-five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations."

7. This Court has consistently emphasised the mandatory nature of the aforementioned time limits in several of its decisions. These include the decision in *Shankar Clearing & Forwarding* v. *C.C. (Import & General)* - 2012 (283) E.L.T. 349 (Del.), the order dated 25th April, 2016 passed by this Court in Customs Appeal No. 14/2016 [*Commissioner of Customs (General)* v. *S.K. Logistics*] and the order dated 29th April, 2016 in W.P.(C) No. 3071/2015

(*M/s Sunil Dutt* v. *Commissioner of Customs (General) New Customs House*). The same position has been reiterated by the Madras High Court in *Sanco Trans Ltd.* v. *Commissioner of Customs, Sea Port/Imports, Chennai* - 2015 (322) E.L.T. 170 (Mad.) and *Commissioner* v. *Eltece Associates* - 2016 (334) E.L.T. A50 (Mad.)."

8. Recently by an order dated 24th April, 2016 in W.P. (C) No. 1734/2016 [*HLPL Global Logistics Pvt. Ltd.* v. *The Commissioner of Customs (General)*] [2016 (338) E.L.T. 365 (Del.)] this Court reiterated that the time-limits in Regulation 20 of the CBLR/Regulation 22 of the CHALR are sacrosanct.

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December, 2013, i.e., beyond the mandatory period of 90 days from the date of receipt of the offence report by the Respondent, i.e., 31st January, 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN".

4. In view of the settled position of law, revocation of licence and forfeiture of security deposit are not proper and justified. Accordingly, after setting aside the impugned order, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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