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

Customs Appeal No. 51741 of 2017
Customs Stay Application No. 50934 of 2017
Customs/ Misc Application No. 50935/2017

[Arising out of the Order-in-Original No. 58/KB/Revocation/ POLICY/2017 dated 13.09.2017, passed by Commissioner of Customs (General), New Delhi]

M/s Service Bureau Logistics LLP **Appellant**

Vs.

Commissioner of Customs (General) **Respondent**
New Delhi

Appearance:

Shri Sanjeev Kumar Singh & Shighra Kumar, Advocates for the Appellants
Shri Amresh Jain, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandaran, Member (Technical)

Date of Hearing/ Decision: 06.12. 2017

FINAL ORDER No. 58414 /2017

Per: B Ravichandaran:

The appellant is aggrieved by the order dated 13.9.17 of Commissioner of Customs (General), Airport New Delhi. With the consent of both the sides, the appeal is taken up for final decision today. The appellant is a Licensed Customs Broker engaged in clearance of export / inputs consignment through Customs. The officers of Customs conducted certain inquiry with reference to imports made by one M/s ANM Electronics (Pvt) Ltd. and M/s. Vidhata Overseas, Delhi. Noticing that these appear to be fictitious firms and there were serious violations in these imports, further inquiries were conducted. The role of the appellant in these violations were also probed. Since it appeared that the appellant did not discharge his obligation under Customs Brokers Licensing Regulation, 2013 properly, proceedings were initiated against them. A show cause notice dated 25.1.2017 enumerating the violations committed by the appellant and calling for the defence, was issued. An inquiry officer was appointed as required under Regulation 20 of CBLR 2013. The said inquiry officer submitted his report on 21.6.17. Thereafter the original authority adjudicated the case resulting in impugned order dated 13.9.17. The original authority held that appellant had violated the CBLR and accordingly revoked their license and also forfeited security amount of Rs.5 lakh available with the department.

2. Learned Counsel appearing for the appellant raised the preliminary objection with reference to validity of the proceedings resulting in the impugned order. Without going into the merits of the

case, he submitted that whole proceedings against them are in violation of statutory time limit prescribed under Regulation 20(5) of CBLR, 2013. He drew our attention to para 16 and 17 of the impugned order. He submitted that admittedly, the report of inquiry officer was submitted after almost 6 months of issue of show cause notice. This is clear violation of statutory time limit prescribed under the Regulation. Relying on various cases decided including the decisions of Hon'ble Delhi High Court, he submitted that proceedings are without jurisdiction and are void.

3. Learned AR strongly contested the grounds of appeal. He submitted that Regulation 20 is to be followed by inquiry officer which provides calling for evidence and complying with the requirement of cross examination, if any, sought by the Customs broker. After the issue of show cause notice, the inquiry officer proceeded with the inquiry as stipulated under the said regulation. It can be seen that adequate opportunity was provided in the month of February, 2017 itself to the appellant. However, they sought adjournment. Further hearing was fixed in April, 2017 which also could not happen. Finally, the appellant appeared on 20.5.2017 and submitted that he has nothing further to state. It is the case of the Revenue that it is necessary to get the defence of the appellant in order to comply with the principles of natural justice. Accordingly, the inquiry officer followed the procedure and submitted the report

in June, 2017. He submitted that the violation of Customs Act, 1962 involved in the present case is serious and the appellant should not be allowed to get away on technicalities.

4. We have heard both the sides and perused the appeal records. The appellant raised preliminary objection regarding the validity of the proceedings resulting in revocation of license. We have perused the legal provisions under Regulation 20 of CBLR, 2013. Regulation 20(5) is as follows:

> ***(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).***

5. It is clear from the plain reading of the provisions that the inquiry by the Assistant Commissioner / Deputy Commissioner should be complete and the report should be submitted within a period of 90 days from the date of issue of notice under sub-Regulation (1). In the present case, the inquiry report was submitted much after 5 months of issue of show cause notice. This fact is not in dispute. We note that the legal sanctity of time limits prescribed in the Regulation has been subject matter of decisions of various Courts and also Tribunal in large number of cases. Reference can be made to the following decisions:

1. ***Indair Carrier Pvt. Ltd. vs. CC (General) [2016 (337) ELT 41 (Del)];***

2. ***HLPL Global Logistics P Ltd. vs. CC (General) [2016 (338) ELT 365 (Del)];***

3. ***Impexnet Logistic vs. CC (General) [2016 (338) ELT 347 (Del)];***

4. ***Overseas Air Cargo Services vs. CC (General) [2016 (40 ELT 119 (Del)];***

5. **Innovative Cargo Services vs. CC (General)]2017 SCC Online CESTAT 307]; and**

6. **M/s. C Impex Logistics Pvt Ltd. vs. CC (General) [2017 SCC Online (Del)].**

6. We note that it has been consistently held by Hon'ble Delhi High Court as well as Hon'ble Madras High Court that the time prescribed under the Regulation are to be strictly followed. In Indair Carrier Pvt. Ltd. vs. CC (General) (supra), Hon'ble Delhi High Court has observed as under:-

> *"7.* ***This Court has consistently emphasised the mandatory nature of the aforementioned time-limits in several of its decisions. These include the decision in Schankar 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.).”

7. In view of the above settled position of law, the impugned proceedings which are in violations of prescribed time limit under the Regulations cannot be sustained. Accordingly, impugned order is set aside.

8. Incidentally, it has to be recorded here that similar such matters are regularly coming up before the Tribunal on many occasions. We have noticed that various violations, which apparently appear to be of serious nature, could not be proceeded with by the Revenue for a proper penal consequence because of non-adherence to time schedule fixed by the Regulation. Such non-adherence of time schedule results in adverse decisions by Tribunal and High Courts. Inspite of such judicial orders, in many serious cases of violations the officers discharging functions under CBLR are not taking the legal mandate with required seriousness. It is expected that this aspect should be looked into by the competent authority for ensuring due compliance so that serious violations of Customs Act/ CBLR by Customs Broker can be dealt with properly and decided on merit.

9. In view of the discussions and analysis, impugned order cannot be sustained. Appeal is allowed. Stay and Misc applications stand disposed.

10. Registry may forward a copy of this order to Chairperson of the CBEC.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member (Technical)

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