IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Date of Hearing: 25.5.2018

Appeal No. C/ 50403/2017-(DB)

(Arising out of Order-in-Original No. 85/SM/POLICY/2016 dated: 23/11/2016 passed by the Commissioner of Customs,(General) NCH New Delhi)

KAMAL SEHGAL **Appellant**

Vs.

CC NEW DELHI **Respondent**

Appearance ,

Sh.S. Sunil Kumar. Adv. - **for the appellant**

Sh. Rakesh Kumar.DR. - **for the respondent**

CORAM: **Hon'ble Mr. Bijay Kumar, Member (Technical)**
Hon'ble Mr. Ajay Sharma, Member(Judicial)

Final Order No.52252/2018

Per: Bijay Kumar, Member(T)

The present appeal is directed against the Order-in-Original no 85/SM/POLICY/2016 dated 23/11/2016 passed by the Commissioner of Customs, General, NCH, New Delhi vide which the appellant CHA licence was revoked on account of violation of the provisions of Customs Broker Licencing Regulation,2013 of the appellant.

2. The fact of the case in short is that the appellant was issued a Show Cause Notice No. 20/SM/POLICY/2016 dated 26/5/2016 on revocation of their licence

under Regulation 18 of CBLR 2013. After following the necessary legal formality the Ld. Commissioner vide impugned order revoked the licence of appellant.

3. The Ld. Advocate, on behalf of the appellant, has stated that mandatory time limit as prescribed under Regulation 20 of CBLR 2013 has not been complied with. Regulation 20 of CLBR-2013 provides the procedure for revoking the licence of the Customs Brokers and the imposition of penalty. Regulation 20(1) prescribes that a notice in writing needs to be issued to the Customs Broker within period of 90 days from the date of receipt of offence report, stating therein the ground on which to revocation the license or imposed penalty is proposed. In this case, the offence report has been received by the Commissioner on 1/06/2015 and a period of 90 days, therefore, expire on 30/08/2015. However, the Show Cause Notice was issued on 30/05/2016, that is much after the completion of 90 days from the date of receipt of Offence Report. Therefore, the time limit prescribed has not been adhered to while issuing the Show Cause Notice for revocation of licence. Ld. Advocate relied upon the following case laws;

1. Overseas air Cargo Services 2016 (340) ELT119 (Del.)

2. Impexnet Logistic vs. CC(General),2016 (338)ELT 347 (Del.)

3. Indair Carrier Pvt. Ltd. vs. CC(General) 2016 (337) ELT 41 (Del.)

4. A.M Ahamad & Co vs CC(Import), Chennai.2014 (309) ELT 433

5. Sowparnika Shipping Service vs CC, Chennai-VIII.2017 (352) ELT 286.

wherein it has been held that period of 90 days of issuance of Show Cause Notice after receipt of offence report is not directory but mandatory condition. On this ground itself, the revoking of the license of the CHA is not sustainable in the eyes of law as per Ld. Advocate;

4. On the merits also the Ld. Advocate has contested the impugned order on the ground that the proceedings initiated against the appellant is without any legal backing. The allegation that import affacted by the M/s Samridhi Overseas and M/S Neelam Export wherein the contravention of Section 7 of FT (DLR) at is 12 of FDR is totally incorrect.

5. On the other hand the Ld. DR. reiterated ground contained in the impugned order and impressed upon that the prescribed time of 90 days could not be complied with on account of the facts that impugned license stood revoked vide order No. O-I-O No. 82/NA/POLICY/2015 dated 14/05/2015 in another case, and therefore, there was no necessity to observe the time limit of 90 days for isse of the Show Cause Notice from receipt of offence Report as contained in the Section 20(1) of the CBLR 2013.

6. Heard the parties, and also perused the records it is a fact that the Show Cause Notice was issued on 30/05/2016 in spite of the offence report being received by the Commissioner on 1/06/2015 from DRI. This is admitted in the impugned order itself at para 17.9.1 which is reproduced as under;

> "***In present case, I find that the CB licence of M/S Kamal Sehgal was revoked in an earlier case vide order O-I-O No. 82/NL/Policy/2015 dated 14/05/2015 whereas the offence report in present case, in form of SCN under Customs Act, 1962, issued by DRI was received in this office on 01/06/2015 i.e. after revocation***

of his CB licence. It is therefore, pertinent to mention that the CB licence of Noticee already stood revoked on the date when the offence report was received. Since the CB licence of the importer already stood revoked vide order dated 14/05/2015, on receipt of offence report in present case, it was felt that no useful purpose will be served by issuing another Show Cause Notice to the under CBLR, 2013 for revocation of his licence, which already stood revoked. However, subsequently, when it was found that the CB had filed an appeal against the said Order-in-Original dated 14/05/2015 and there was possibility of the said Order-in-Original dated 14/05/2015 being set aside by the Hon'ble CESTAT, the decision was taken to issue the present Show Cause Notice No. 20/SM/Policy/2016 dated 30/05/2016 under CBLR, 2013 in the present case. In fact, the said O-I-O dated 14/05/2015 was subsequently set aside by the Hon'ble CESTAT vide their Final Order No. C/A/51959/2016-CU(DB) dated 01/06/2016. In view of this, I find that the delay caused in issuance of subject Show Cause Notice in present case is due to the CB licence of Noticee already standing revoked vide O-I-O No. 82/NK/Policy 2015 dated 14/05/2015 and there is no question of any prejudice being caused in any manner to the interest of the CB due to this."

7. Thus it is accepted by the Adjudicating Commissioner that the Show Cause Notice has been issued after the prescribed time limit of 90 days under the Section 20(1) of the CBLR 2013. Merely, that the appellant has filed appeal against earlier invocation of licence, could not extend statutory time limit as prescribed under the CBLR Rule, 20(1). Also at the time of the receipt of the offence report the fact that CB licence of the appellant stood revoked, it was felt that there was no need for issuing the fresh notice as held by the Commissioner in the impugned order is contrary to the provisions of Rule20(1) of the CBLR-2013. Subsequently, when it was found that appeal against the said Order-in-Original dated 14/05/2015 was pending before Hon'ble CESTAT, the decision was the taken the issue the Show Cause Notice 30/05/2016. Subsequently, the Hon'ble CESTAT set aside the Order-in-Original vide its order dated C/A/51959/2016-SU(DB) 1/06/2017. The conclusion of the Commissioner in the impugned order

that no prejudice is caused to the appellant is contrary to the provisions of the CBLR-2013. This conclusion drawn by the Commissioner in the impugned order is not sustainable under Rule20(1) of CBLR Rule 2013. Therefore, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(AJAY SHARMA) (BIJAY KUMAR)
Member(Judicial) Member(Technical)

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