

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/87465/17

(Arising out Order-in-Appeal No. 26/2017-18 dated
14.07.2017 passed by the Commissioner of Customs
(Gen), Mumbai)

For approval and signature:

Hon’ble Shri Ramesh Nair, Member (Judicial)
Hon’ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Ryan Sea Air Agent Appellant

Vs.

Commissioner of Customs (Gen), Mumbai Respondent

Appearance:

Shri N.D. George, Advocate for the appellant
Shri Chatru Singh, AC (AR) for the respondent

CORAM:

Hon’ble Shri Ramesh Nair, Member (Judicial)
Hon’ble Shri C J Mathew, Member (Technical)

Date of hearing : 07.02.2018
Date of decision : 05.06.2018

O R D E R No: A/86606 / 2018

Per: C J Mathew

Licence no. 11/897 issued under Customs House Agents Licensing Regulations, 2004 of M/s Ryan Sea Air Agent was confirmed as suspended under regulation 19 of Customs Brokers Licensing Regulation, 2013 *vide* order no. 26/2017-18 dated 14th July 2017 after conduct of post-decisional hearing on 7th July 2017 by Principal Commissioner of Customs (General), Mumbai and appeal is directed against that suspension.

2. Narrating the background, Learned Counsel for appellant submitted that the licence was suspended on 9th June 2017 following the report of alleged involvement of the broker in certain illegal imports effected at Air Cargo Complex, Chatrapati Shivaji International Airport, Mumbai received on 17th May 2017. The confirmation of suspension in the impugned order is challenged on the ground that the action was not in conformity with timelines prescribed by Central Board of Excise & Customs in circular no. 9/2010-Cus dated 8th April 2010 for issue of suspension order within fifteen days of incident report, for grant of post-decisional hearing within the succeeding fifteen days and for passing of the post-decisional hearing order within fifteen days thereafter. It is further contented that failure on the part of the licensing authority to furnish relied upon documents for

affording them with opportunity to respond in the post-decisional hearing vitiates the proceedings. Learned Counsel also assails the impugned order for lack of evidence and discarding of the contention that a broker has a limited role. Reliance is placed by Learned Counsel on the decision of the Hon'ble High Court of Delhi in *Impexnet Logistic v. Commissioner of Customs (General)* [2016 (338) ELT 347 (Del)] holding the timelines to be sacrosanct.

3. Learned Authorized Representative relies upon the decision of the Hon'ble High Court of Delhi in *Millennium Express Cargo Pvt Ltd v. Commissioner of Customs* [2017 (354) ELT 467 (Del)].

4. Suspension of licence under regulation 19 of Customs Brokers Licensing Regulations, 2013 is resorted to when circumstances require immediate action rather than await the completion of the formal and comprehensive procedure prescribed for revocation of licence. The licensing authority is vested with the option of suspension followed by a post-decisional hearing before confirmation of suspension. There is no doubt that suspension cannot be of indefinite length but is a forerunner to initiating the procedure prescribed for revocation and is to be constrained within the timelines laid down for revocation in regulation 20 of Customs Brokers Licensing Regulations, 2013.

5. The gap between the incident report and the suspension was twenty-three days, post-decisional hearing followed within twenty-eight days therefrom and the suspension was confirmed seven days later – the entire exercise was spread over a total of fifty-eight days which, according to Learned Counsel, is not in conformity with the circular cited *supra*. We take note that the post-decisional hearing scheduled for 16th June 2017 could be held only on 7th July 2017 owing to difficulties expressed by the appellant. Though the order of suspension was passed a few days beyond the time-limit specified in the circular, the total time for the confirmation of suspension would have otherwise been well within the time-frame stipulated therein. Moreover, time-lines not contemplated in the Regulations are directory as the mandatory time-lines referred to by Hon'ble High Court in *re Impexnet Logistic* are those in regulation 19 and regulation 20. The time-lines for suspension cited on behalf of appellant are contained in a circular of the Central Board of Excise & Customs and while, laudatory in its objective, may have to be deviated from, on occasion, in minor ways owing to peculiarities of the facts.

6. The appellant justifies delayed response to offer of hearing by referring to lack of relied upon documents. This is also the second prong for assailing of the impugned order. As we have already premised earlier, suspension is

not revocation; not only is it of limited duration but is permitted by law as an intention reaction to an incident and warranted by circumstances. Consequently, the existence of documents is highly improbable. Undoubtedly, an inquiry cannot claim to proceed without relied upon documents but a suspension can. Lack, or non-furnishing, of documents is not a valid challenge to suspension. Regulation 19 of Customs Brokers Licensing Regulation, 2013 prescribes

“19. Suspension of licence. —

(1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated.

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20.”

7. From this, it is clear that the licensing authority is vested with the discretion to suspend if warranted. A

justifiable challenge to suspension can arise if the time-lines for post-decisional hearing or for order of continuation is not complied with or is not followed by enquiry within the period stipulated in regulation 20 of Customs Brokers Licensing Regulations or if the circumstances are such that urgency of action is not tenable. The appellant has not been able to bring forth a challenge on any of these issues.

8. A broker is part and parcel of the customs formation and it is the licensing authority who has to administer the formation. An appellate intervention in an administration is justifiable only when there is blatant disregard of statute or perverse and unreasonable exercise of authority. Evidence of such is lacking in the present instance.

9. The alleged role of the broker in the alleged smuggling is the crux of the proceedings against the appellant. The role disclaimed by the appellant for questioning the suspension, if ruled upon at this stage, would render redundant the process under regulation 20 of Customs Brokers Licensing Regulations, 2013. That would not be consistent with the law. An inquiry and its consequential order requires adherence to norms – statutory and natural – and any lack thereof would vitiate proceedings. The extent of involvement will have to be evidenced if the order of suspension is to be carried to its logical conclusion.

10. We, therefore, decline to interfere with the impugned order on the grounds set forth in the appeal and argued during the proceedings before us. Appeal is dismissed.

(Pronounced in Court on 05.06.2018)

(Ramesh Nair)
Member (Judicial)

(C J Mathew)
Member (Technical)

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