

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85126 OF 2023

[Arising out of Order-in-Original F. No. VIII(Cus)25-96/CT/Eicon/2022 dated 25th January 2023 passed by the Commissioner of Customs, Nagpur.]

Eicon Impex LLP

Plot No. 76, Sr. No. 783, Bajirao Nagar
Untwadi, Nasik, Maharashtra - 422008

... Appellant

versus

Commissioner of Customs

GST Bhawan, Telengkhedi Road, Civil Lines
Nagpur - 440001

...Respondent

APPEARANCE:

Shri Ashwani Kumar Prabhakar, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85375 /2023

DATE OF HEARING:	28/02/2023
DATE OF DECISION:	28/02/2023

PER: C J MATHEW

This appeal is taken up for disposal within the narrow compass
of determination of the correctness in having invoked regulation 16 of

Customs Broker Licensing Regulations, 2018, in order¹ of Commissioner of Customs, Nagpur, for continuation of suspension of 'customs broker' licence of M/s Eicon Impex LLP, after the initial order on 28th December 2022, consequent to mandated 'post-decisional hearing' of 10th January 2023. It would appear that the appellant had handled bill of entry no. 2422378/13.09.2022 for import of several articles by M/s White Feather Trading Company which, upon examination on 21st September 2022, was found to have been mis-declared and, in view of the lapse, led to suspension.

2. Several reasons had been adduced in the impugned order for resort to suspension of 'customs broker' licence and in the grounds of appeal countering these but concerned, as they are, with breach of obligations under Customs Broker Licensing Regulations, 2018, the present disposal must, at this stage, steer clear of any consideration of these.

3. Learned Counsel appearing for the appellant submitted that suspension of 'customs broker' licence is intended only in some rare circumstances with compulsion of immediacy as contemplated in regulation 16 of Customs Broker Licensing Regulations, 2018 and that, in the facts of the present dispute, the suspension pertains to goods imported on 28th December 2022 *i.e.* more than three months

¹ F. No. VIII(Cus)25-96/CT/Eicon/2022 dated 25th January 2023

after the alleged offence unearthed on examination of the cargo. Having been in operation for three months thereafter, and without any other proceedings for misdemeanors, he argued that no case has been made out to justify delay in the reaction of the licensing authority. He further contended that the decision of the Tribunal in *International Shipping Agency v. Commissioner of Customs (General), Mumbai [2006 (196) ELT 439 (Tri.-Mumbai)]* has held that

‘4. Since there has been a delay in ordering the suspension of the licence and that delay has not been satisfactorily explained and no reasons for the suspension appear in the order, the prayer of the applicant that he & his family has no other means of livelihood other than the business as CHA License holder induces us to conclude that we cannot uphold the suspension of the licence. The suspension order is therefore vacated.’

4. He relied upon the decision of the Tribunal in *P Cawasji & Co v Commissioner of Customs (General), Mumbai [2018 (364) ELT 871 (Tri.-Mumbai)]*, wherein it has been held that the delay of over six months erases justification for immediate suspension and, in *Poonam Cargo Services v. Collector of Customs, Delhi [1999 (110) ELT 696 (Tribunal)]* holding that only circumstances leading to necessity of immediacy of action would have to be considered, and been taken note of, to set aside the detriment. He pointed out that, in the same way, the Tribunal in *R N Lal & Brothers v. Commissioner of Customs (Preventive), WB, Kolkata [2006 (205) ELT 686 (Tri.-Kolkata)]* and

in *G & K Shipping Pvt Ltd v. Commissioner of Customs (General), Mumbai [2005 (192) ELT 251 (Tri.-Mumbai)]* had insisted that principles of natural justice must necessarily be followed for such action.

5. On the other hand, Learned Authorised Representative submitted that the process prescribed in regulation 16 of Customs Broker Licensing Regulations, 2018 had been duly complied with before commencing proceedings. It was also contended that the Hon'ble High Court of Madras, in *Sabin Logistics Pvt Ltd v. Commissioner of Customs, Chennai [2018 (362) ELT 226 (Mad)]*, had specifically held that there can be no 'straitjacket' formula for ascertaining limits of immediacy.

6. The present dispute, appealing, as it does, against suspension of 'customs broker' licence that appeared to have been prompted, no doubt, by facts and circumstances relating to import effected on behalf of client, does not lend itself to scrutiny beyond very limited aspect of Customs Broker Licensing Regulations, 2018. Furthermore, suspension is nothing but an interim measure and which normally does not warrant interference unless the licensing authority has, itself, breached principles of natural justice or is in circumstances in which recourse to such measure is obviously inappropriate

7. Regulation 16 of Customs Broker Licensing Regulations, 2018

empowers the licensing authority to suspend a 'customs broker' licence but only upon determination of immediate reaction and as intendment of temporary deprivation preceding permanent erasure. Though the provisions do saddle such empowerment with the prerequisite of immediacy, there are no guidelines for determination of limits of immediacy and that, in our opinion, is best left to the licensing authority.

8. Nonetheless, suspension of a licence carries with it a detriment of prohibition on continued working of 'customs broker' and, however temporary, is yet a detriment. Other than immediacy, the other essential condition for resort to suspension is the intent to continue, or commence, proceedings initiated therein. The period within which such proceedings may be initiated is also incorporated in the regulations governing administration of licences as ninety days from receipt of the offence report. In the present instance, licence itself was suspended only after the stipulated ninety days and, thereby, has jeopardized the propriety of commencement of any subsequent proceedings. It is not in dispute that the proceedings had not been initiated at the time of suspension and, in accordance with regulation 16 of Customs Broker Licensing Regulations, 2018, such instances of suspension should be followed by proceedings, including issue of chargesheet within the prescribed timeframe, for it to be *bona fide* exercise of authority. The time limit for initiating such action in all,

and any, circumstances has also lapsed. The pre-condition for invoking the power of suspension, viz., that of temporary detriment pending initiation and conclusion of proceedings for revocation, did not appear to have been intended to be complied with at all. Consequently, the suspension of licence, ordered to be continued by the impugned order, is not in accordance with the Regulations for want of intent to be taken to legal conclusion.

9. Accordingly, the suspension is set aside and the licence restored for operation. Needless to say, this order shall not be bar to any decision taken by the licensing authority for appropriate action, as deemed fit and in accordance with law, for revocation of licence or other detriment prescribed therein.

10. Appeal is, accordingly, allowed.

(Operative part of the order pronounced in the open court on 28th February 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)