

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 141 of 2008

(Arising out of Order-in-Original CAO No. 151/2007/CAC/CC(I)/SP/Gr. III dated 24.12.2007 passed by the Commissioner of Customs (Import), New Custom House, Mumbai)

San International

C-163, Greater Kailash Part-1,
New Delhi – 110048.

.... Appellant

Versus

Commissioner of Customs (Import)

New Custom House, Ballard Estate,
Mumbai – 400 001

.... Respondent

WITH

Customs Appeal No. 142 of 2008

(Arising out of Order-in-Original CAO No. 151/2007/CAC/CC(I)/SP/Gr. III dated 24.12.2007 passed by the Commissioner of Customs (Import), New Custom House, Mumbai)

Varun Freight Forwarders

(C.B. No.11/576)
Sushila Bhavan, 1st Floor,
24, Adimarzban Path
Mumbai – 400 053
Versus

.... Appellant

Commissioner of Customs (Import)

New Custom House, Ballard Estate,
Mumbai – 400 001

.... Respondent

Appearance:

Shri N.D. George, Advocate for the Appellant

Shri Rajan Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85539-85540/2024

Date of Hearing: 29.01.2024

Date of Decision: 03.06.2024

Per: M.M. Parthiban

These appeals have been filed by the appellants M/s San International, New Delhi (herein after referred to as 'the importer' in any specific reference to them) and M/s Varun Freight Forwarders,

Mumbai [herein after referred to as 'the Customs Broker (CB)/ Customs House Agent (CHA) in any specific reference to them] and both of them where ever common reference is required to be made are referred together as "the appellants" for short, assailing the Order-in-Original CAO No. 151/2007/CAC/CC(I)/SP/Gr.III dated 24.12.2007 (hereinafter referred to as "the impugned order") passed by the Commissioner of Customs (Import), New Custom House, Mumbai.

2. Brief facts of the case are that the importer appellant had imported five consignments of 'Nylon Tafeta' through Mumbai Sea Port by filing five Bills of Entry viz., 7298 dated 18.10.1997; 13241 dated 30.09.1997; 11006 dated 26.05.1997; 12232 dated 27.06.1997; and 3087 dated 09.06.1997 during different period. As the import of such goods required Special Import Licenses, the importer appellant procured the same from the open market through the licensed brokers and handed over these to their Customs Broker (CB) for the purpose of clearance of goods from customs. Subsequent investigation conducted by DRI found that the Special Import Licenses procured by the importer appellant were forged and are in the nature of bogus licenses. Accordingly, the Department initiated show cause proceedings by issue of Show Cause Notice dated 31.03.1999 proposing for confiscation of the imported goods and imposition of penalty on the appellants under the Customs Act, 1962. In adjudication of the above SCN, the learned Commissioner of Customs by issue of the impugned order confiscated the imported goods under Sections 111 (d) and 111 (o) of the Customs Act, 1962, and offering the same to be redeemed upon payment of redemption fine of Rs.10,00,000/- (Rupees Ten lakhs). Besides this, the learned Commissioner had also imposed penalty on the importer appellant for Rs.5,00,000/- (Rupees Five lakhs) and on the CB/CHA appellant for Rs.3,00,000/- (Rupees Three lakhs) under Section 112(a) *ibid*. Being aggrieved with the above order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate for the appellants stated that appellant importer cleared the imported goods from customs control on submission of three Special Import Licenses bearing No. 2404107

dated 20.09.1996; No. 0012923 dated 15.10.1997 and No.2041891 dated 24.04.1996. Hence there was no violation in respect of imported goods at the time of its clearance from the customs authorities. However, subsequent investigation conducted by DRI revealed that these licenses were forged. Hence he pleaded that the importers are not at fault as these licenses have been procured from the market through license brokers namely S/Shri. Naresh Seth and Mahendrabhai. Further, he submitted that in the impugned order no penalty have been imposed on these brokers who have actually dealt with the licenses. Hence, learned Advocate claimed that there is no justification in imposing penalty on the importer appellant and the CB appellant. In this regard, he relied upon the Order of the Tribunal in the case of *ICI India Limited Vs. Commissioner of Customs, Calcutta* – 2003 (151) E.L.T. 336 (Tri. Del.).

3.2 Further, learned Advocate also stated that CB appellant has handled the licenses in clearance of the imported goods in the role of Customs Broker/Custom House Agent, and hence he has no role to play in purchase of licenses which are subsequently proved to be forged. Hence, he pleaded that no penalty is impossible on the CB appellant.

3.3 Learned Advocate also submitted that the bills of entry for the impugned imports have been filed during the period May, 1997 to October, 1997, for which statements recorded on 31.01.2006 and the show cause notice was issued on 27.12.2007, which is nearly after a period of more than nine and half years from the time of import. Such an action taken by the department after the maximum period of 5 years prescribed even for demand of duty under the Customs Act do not justify for imposition of penalty under Section 112(a) *ibid*. In this regard, he relied upon the judgements of Hon'ble High Court in the following cases:

- (i) *Parekh Shipping Corporation Vs. Assistant Collector of Customs, Bombay* – 1995 (80) E.L.T. 781 (Bom.)
- (ii) *Neeldhara Weaving Factory Vs. DGFT, New Delhi* – 2007 (210) E.L.T. 658 (P&H)

4. Learned Authorised Representative (AR) appearing for the department, on the other hand, submitted that inasmuch as the

licenses have been shown as forged and confirmed by the DGFT/license issuing authorities, the impugned order confiscating the imported goods for the violation of Customs law and imposition of penalty on the appellants are sustainable. Therefore, he pleaded that the appeal filed by the appellants is liable to be dismissed.

5. Heard both sides and perused the records of the case. I have examined the submissions advanced by the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department. Further, I have also perused the additional written submissions in the form of paper books submitted by both sides along with citation of case laws which both sides have mentioned in support of their case.

6. The issue involved in these appeals is to decide whether the action taken by the learned Commissioner of Customs in the impugned order for confiscation of the goods under Sections 111 (d) and 111 (o) of the Customs Act, 1962, and imposition of penalty under Section 112(a) *ibid* on the appellants is sustainable.

7. From the facts of the case, I find that in respect of the imported goods cleared under five B/Es which were filed on different dates during the period May, 1997 to October, 1997, the investigation in respect of the Special Import Licenses was initiated in the year 1998. The investigation indicated that the manner of forgery of such licenses were in the nature of using the original stationary with forged seals and signature of the licensing authorities; multiple copies of licenses being made on the same license number and colour photocopies of the validly issued licenses were taken to show that as though these were the original licenses. The result of verification conducted by DRI in this case was received in the form of reply letters from the DGFT/licensing authorities specifying the manner in which the 3 licenses have been forged. These include (i) letter of Deputy Director General of Foreign Trade, Coimbatore dated 02.02.1998 on license No. 0012923 dated 15.10.1997 issued to M/s Lakshmi Mills Co. Ltd.; (ii) letter of Deputy Director General of Foreign Trade, Madurai dated 04.02.1998 on license No. 2041891 dated 24.04.1996 issued to M/s Thiagarajar Mills Ltd., Kappalur and (iii) letter of Deputy Director

General of Foreign Trade, Mumbai dated 18.08.1998 on license No. 2404107 dated 20.09.1996 issued to M/s Tata Exports, Mumbai. It is not clearly forthcoming in the SCN and in the impugned order that when the evidences were available in the form of confirmation by the licensing authorities that the licences have been forged and have not been issued by them, why the Department took almost eight years to record the statements of license brokers. Further the CB appellant was also called upon to record his statement in 2006. While these have been relied upon, in the impugned order no penalty was imposed on these license brokers.

8.1 Further, the learned Commissioner of Customs had imposed penalty on the importer appellant for the reason that he did not comply with the summons issued by the investigating authority and so he did not co-operate with the investigation. He also stated that no proof of payment of consideration for purchase of the license involved in the transaction was provided before the adjudicating authority. Thus the adjudicating authority imposed penalty on the importer appellant on the above basis. The CB appellant was also imposed penalty for the reason that the licenses were given to them on the advice of importer, and there is no evidence to show that whether the license brokers or the CB/CHA was involved in procuring such forged licenses.

8.2 In this regard, I find that the penalty was imposed on the appellants in the impugned order under Section 112(a) of the Customs Act, 1962. Relevant legal provision is extracted and given below:

Penalty for improper importation of goods, etc.

"Section 112. Any person,—

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or shall be liable,—
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees (as it stood at the time of dispute and later by amendment in Finance Act, 2001 w.e.f. 11.05.2001) [not exceeding the value of the goods or five thousand rupees], whichever is the greater;..."

8.3 Factual matrix of the case clearly provide that the forgery of the licenses have been undertaken by certain unscrupulous persons, who are other than the importer appellant and CB/CHA appellant. It is a fact that the impugned order had ordered for confiscation of the imported goods for violation of the provisions of sub-sections (d) and (o) of Section 111 of the Customs Act, 1962. However, it is nowhere brought out in the impugned order that the appellants were directly concerned in the forgery of the licenses or their action or inaction have led to such forgery. In view the above facts, I am of the considered view that penalty cannot be imposed on the appellants under Section 112(a) *ibid*, unless clear evidences are placed to state that they have acted in a particular manner or they have failed to do any particular act which resulted in the forgery of licenses in the present case, enabling the imported goods for being liable to confiscation under Section 111(d) and 111(o) *ibid*.

9. I also find that the judgements of the Hon'ble High Courts had clearly laid down that the power of imposition of penalty for willful mis-statement or suppression of facts etc. has to be exercised within a reasonable time as prescribed under the statute. The relevant paragraphs of the judgement of Hon'ble High Court of Punjab & Haryana in the case of Neeldhara Weaving Factory (*supra*) and Hon'ble High Court of Bombay in the case of Parekh Shipping Corporation (*supra*) are extracted and given below:

Judgement of Hon'ble High Court of Punjab & Haryana

"9. The petitioner having committed the default way back in 1988-89 in not fulfilling his export obligation in toto, the authorities could initiate penalty proceedings against the petitioner only within a reasonable time. It is not in dispute that a show cause notice for levy of penalty was issued for the first time on 9-8-2000. Still the matter remained pending and the penalty was imposed, nearly 3 years after the show cause notice, on 30-6-2003. The judgments referred to above as cited by the petitioner do support the proposition that the exercise of power has to be within a reasonable time, where no time limit prescribed under the statute for exercise thereof. Respondents could not justify the period of delay in issuing show cause notice to the petitioner for levy of penalty.

10. *In Government of India v. Citedal Fine Pharmaceuticals, 1989 (42) E.L.T. 515 (S.C.), it was observed as under :-*

"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

11. In *State of Gujarat v. Patel Raghav Natha and others*, AIR 1969 SC 1297, the Hon'ble Supreme Court considered the exercise of revisional power under Section 211 of the Bombay Land Revenue Code 1879. It was observed :-

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e., more than a year after the order, and it seems to us that this order was passed too late."

12. In *Ibrahimpattanam Taluk Vyavasaya Collie Sangham*, AIR 2003 SC 3592, while referring to Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, expression "at any time" for exercise of suomotu power was interpreted to mean within "reasonable time". Relevant observations are as under :-

"9. ...Use of the words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suomotu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suomotu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such an effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and with what period the suomotu powers is to be exercised. In sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suomotu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suomotu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suomotu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

10. This Court in a recent decision in *D. Saibaba v. Bar Council of India* and another, (2003) 6 SCC 186, after referring and quoting passages from Justice G.P. Singh's *Principles of Statutory Interpretation* observed that "Reading word for word and assigning a literal meaning to Section 48-AA would lead to absurdity, futility and to such consequences as Parliament could have never intended. The provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning and so read it- as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised."

11. In *Principles of statutory Interpretation* (8th Edn., 2001), the author has stated thus :-

"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after constructing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed."

The authority has stated again as under :-

"In selecting out of different interpretations 'the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things', as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice."

12. The learned single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words 'at any time' in sub section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned single Judge. Where a statute provides any suomotu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is 'reasonable time' has to be determined on the facts of each case."

13. *In State of HP and others v. Rajkumar Brijender Singh and others*, AIR 2004 SC 3218, referring to Section 20 of the HP Ceiling on Land Holdings Act, 1973, conferring suomotu power on Financial Commissioner, interpreting the words "at any time", it was held that such power had to be exercised within reasonable time. The relevant observations are :-

"6. .. It is true that sub-section (3) provides that such a power may be, exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fix period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power suomotu action could be exercised. For example in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suomotu power, well it could be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted the order of the Collector which has been interfered with was passed in January 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suomotu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suomotu in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State. Thus, the view taken by the High Court is not sustainable..."

14. *In Parekh Shipping Corporation's case (supra)*, show cause notice issued for short landing more than 12 years after the relevant date was set aside.

15. *In Wilco and Company's case (supra)*, Madras High Court had set aside notice for imposition of penalty issued after six years of cause of action.

16. *In Kanhai Ram Thekedar's case (supra)*, the Hon'ble Supreme Court set aside the demand for payment of interest four years after the assessment order being not within the reasonable time.

17. Accordingly, we do not find any justification for levy of penalty after 14 years of the default. The contention of the counsel for the revenue to the effect that the petitioner having committed default cannot be permitted to raise these technical pleas is to be noticed and rejected, being without any merit.

18. In view of the above discussion, the writ petition is allowed, impugned orders Annexures P-13 and P-14 are quashed with no order as to costs."

Judgement of Hon'ble High Court of Bombay

"2. The respondent No. 1 served show cause notice dated January 19, 1995 on the petitioners claiming that certain goods were reported as short-landed by Bombay Port Trust and the petitioners should account for the same or explained the short-landed goods or otherwise the penalty would be imposed under Section 116 of the Customs Act. The service of show cause notice has given rise to the filing of the petition under Article 226 of the Constitution of India.

2A. Shri Venkateswaran, learned counsel appearing on behalf of the petitioners, submitted that the provisions of Section 116 of the Customs Act should not be exercised after a passage of more than 12 years from the date of vessel leaving Port of Bombay. The learned counsel submitted that it is impossible for the Agents of Foreign Vessel to show cause as to whether the goods were short-landed, 12 years before the date of show cause notice. In our judgment, the submission is correct and deserves acceptance. It surpasses our imagination as to what prompted respondent No. 1 to wait for a duration of 12 years to issue show cause notice. The exercise of powers under Section 116 of the Customs Act, if necessary, must be undertaken within a reasonable time. Shri Venkateswaran submitted that the Customs Excise and Gold Control Tribunal has held that show cause notice issued beyond the period of five years from the date of vessel leaving the Port is arbitrary and unreasonable. In our judgment, the period of five years is more than reasonable. Indeed, the bond executed by the Agents should also be for a duration of five years and in case the respondents desire to proceed against the Agents, action must be taken before the expiry of the period. The bond should not be kept alive for all time to come and must be limited for a duration of five years from the date of execution. For these reasons, the show cause notice issued by respondent No. 1 cannot be sustained and petition must succeed.

3. Accordingly, rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs."

10. In view of the foregoing discussions and analysis, and in terms of the judgements of the Hon'ble High Court, it is found that there are no strong grounds for imposition of penalty under Section 112(a) of the Customs Act, 1962 on the appellants. Accordingly, the impugned

order dated 24.12.2007 is not legally sustainable to this extent. As the Special Import Licenses have been proved by evidences that they have been forged, I do not consider it fit to intervene with the part of the order confiscating the goods and offering the same on redemption fine under Section 125 *ibid*.

11. In the result, by setting aside the impugned order dated 24.12.2007 to the above extent as stated in paragraph 10 above, the appeal filed by the appellants are partly allowed in their favour.

(Order pronounced in open court on 03.06.2024)

(M.M. Parthiban)
Member (Technical)

Sinha