CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87167 OF 2021

[Arising out of Order-in-Original No: 38/CAC/PCC(G)/PS/CBS(Adj) dated 20th July 2021 passed by the Principal Commissioner of Customs (General), Mumbai – I.]

D P Logistics Pvt Ltd
601/602 Raikar Chambers, K D Marg, Govandi (E)
Mumbai - 400088 … ***Appellant***

versus

Principal Commissioner of Customs (General)
New Customs House, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85595/2024

DATE OF HEARING:	10/01/2024
DATE OF DECISION:	13/06/2024

PER: C J MATHEW

M/s D P Logistics Pvt Ltd, holder of customs broker licence no. 11/348, was proceeded against in connection with their role in the filing of 95 shipping bills on which, allegedly, various benefits available to exporters, such as drawback, refunds and other incentives, had been misappropriated by submission of purportedly bogus invoices from suppliers.

2. From the records of proceedings, it would appear that the primary role has been assigned to one Shri Mukul Gupta of M/s Dhairya International for whom a proxy organization, under the name and style of M/s Kajal Creations, was established by an ex-employee of the appellant herein. The notice dated 27th October 2020, issued under Customs Broker Licencing Regulations, 2018, culminated in order[1] of Principal Commissioner of Customs (General), Mumbai – I revoking the licence of the appellant herein and directing forfeiture of security deposit, both under regulation 14 of Customs Brokers Licensing Regulations, 2018, while, at the same time, imposing penalty of ₹ 50,000/- under regulation 18 of Customs Brokers Licensing Regulations, 2018. The charge against the appellant rested upon alleged breach of regulation 10(d), 10(e), 10(f), 10(m) and 10(n) of the Customs Brokers Licensing Regulations, 2018.

3. On behalf of the appellant, Learned Consultant submitted that the timelines prescribed in regulation 17 of Customs Brokers Licensing Regulations, 2018 had been violated inasmuch as the enquiry itself had

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[1] [order-in-original no. 38/CAC/PCC(G)/PS/ CBS(Adj) dated 20th July 2021]

been ordered beyond the stipulated framework. According to him, the enquiry report was delayed by 28 days and the final order by 58 days from the relevant date. It has been brought on record that the delay in completion of the enquiry was attributable to non-availability of the relied upon documents which could, ultimately, be provided only on 7th December 2020 and as cross-examination of the ostensible exporter could happen only on 20th January 2021. In these circumstances, the traversing of the non-completion of enquiry by 28 days beyond the stipulated 90 days from the date of notice of enquiry does not appear to suffice for setting aside the impugned order. The delay in finalization of the proceedings by the licensing authority which, though to have occurred by 21st May 2021, by another 58 days beyond is, however, a matter of concern.

4. According to Learned Authorized Representative, the delay in completion of the enquiry had been adequately explained and submitted that, with enquiry proceedings having taken less than 365 days from the receipt of the investigation report, all the delays are reasonable and, in the light of the order of the Hon'ble High Court of Bombay in *Principal Commissioner of Customs (General) v. Unison Clearing Pvt Ltd [2018 (361) ELT 321 (Bom.)]*, condonable.

5. Before proceeding further, it would be appropriate to refer to the decision of the Hon'ble High Court of Bombay *supra* as both sides have

relied upon it as supportive of their respective claims on adherence, or otherwise, with time-lines. It would appear that the Hon'ble High Court had been faced with a number of appeals filed by Commissioner of Customs (General), Mumbai against orders of the Tribunal that had set aside revocation, forfeiture and penalties imposed upon customs brokers solely for non-compliance with the time-lines stipulated in the relevant Customs Brokers Licensing Regulations, 2018. While taking note of the statutory requirements, the Hon'ble High Court opined that the Tribunal should have examined the facts pertaining to delay at each stage along with explanations for such instead of disposals on the premise that the time-lines are mandatory. It was in this context that the Hon'ble High Court of Bombay directed that

> *'15. In view of the aforesaid discussion, the timelimit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the timelimit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this timelimit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the*

> *deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.'*

6. It is seen from the impugned order that the licensing authority did take note of the contention of the appellant herein that the initiation of enquiry proceedings, as well as conclusion thereof, had been delayed to observe that

> *'5.1 I find that inquiry Officer (10} has clearly staled the reasons for the delay in conducting the inquiry. In view of the above, I find that the delay has occurred in completion of inquiry proceedings due to non-submission of defence by the CB within time limit. Moreover, such delay cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB, Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.'*

7. Learned Consultant has placed on record the factual error in the findings of the licensing authority insofar as narration of circumstances is concerned but, as we have noted *supra*, the delay appears reasonable and not inconsistent with the greater responsibility of ensuring that principles of natural justice had been duly complied with. Nonetheless, the licensing authority has, in setting out the final decision which exceeded the stipulated time limit of 90 days from the relevant date by further 58 days, adduced no explanation. We find nothing on record to

conclude that this delay is attributable to deliberate acts on the part of the appellant; the impugned order is silent about the date on which the copy of the enquiry report, with communication of intent of acceptance thereof, had been conveyed to the appellant herein and neither is there any record of the correspondence leading to grant of personal hearing. More importantly, it is the failure, or disinclination, to even place narration of events leading from the last explained delay on record that appears to convey the non-applicability of time-lines to the licencing authority which is of concern. Doubtlessly, the decision in *re Unison Clearing Pvt Ltd* has not affirmed that the time-lines are mandatory in every situation but, at the same time, there is no affirmation either that, irrespective of circumstances, it is only directory.

8. Thus, it was not for the licensing authority to cite the decision in *re Unison Clearing Pvt Ltd* for alienating the claim of the customs broker in the impugned proceedings that the delay which occurred had jeopardized the enquiry while refusing to submit to the binding nature of the decision insofar as subsequent delays were concerned. The appellant herein could not have been prescient to anticipate delay in concluding the proceedings. It was incumbent upon licencing authority to offer justification; the absence thereof jeopardizes the outcome. It would, however, be inappropriate to set aside the findings for insufficiency in justification of delay. The deficiency must, nonetheless, be repaired; for us to proceed to the merits of submission

of the appellant would do damage to the sanctity of the decision of the Hon'ble High Court of Bombay. To enable such by the licensing authority, we set aside the impugned order and remand the matter back to the Commissioner of Customs (General) to incorporate justification, if any, and pass orders afresh in accordance with jurisdictional competence, or otherwise, in consequence. Needless to say, the customs broker shall be heard in person before fresh orders are passed on this limited aspect of proceedings under Customs Broker Licencing Regulations, 2018.

9. The proceedings are, therefore, restored to the original authority for incorporating justification, if any, for delay in the impugned order.

(Order pronounced in the open court on 13/06/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*