CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89524 OF 2013

[Arising out of Order-in-Original No: 124/2013/CAC/C(G)/PKA/CHA dated 28th October 2013 passed by the Commissioner of Customs (General), Mumbai.]

M Dharamdas & Co
37 Sharaff Bhavan, 159, P D'Mello Road,
Mumbai - 400001 … ***Appellant***

versus

Commissioner of Customs (General)
New Customs House, Ballard Estate, Mumbai – 400001 ***…Respondent***

APPEARANCE:

Shri Chirag Shetty, 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: 87454/2024

DATE OF HEARING:	13/06/2024
DATE OF DECISION:	12/12/2024

PER: C J MATHEW

This appeal of M/s M Dharamdas & Co lies against revocation of customs broker licence[1] and forfeiture of security deposit for breach of regulation 12, 13(b), 13(d), 13(e), 13(f), 13(i), 19(1) and 19(8) of Customs House Agents Licensing Regulations, 2004 in the handling of imports of 'cranes' and for which proceedings were initiated. Though the proceedings were initiated in show cause notice dated 9th October 2012 imputing alleged misconduct under the erstwhile Regulations, the licencing authority has drawn upon the empowerment under Customs Brokers Licensing Regulations, 2013 which had, since, been notified.

2. Learned Counsel for the appellant while making elaborate submissions on the report of the enquiry authority which had held only some of charges to be proved also pointed out the gap of 109 days between the offence report and the initiation of proceedings, that of 356 days between the initiation of proceedings and completion of enquiry and that, notwithstanding the lapse of only 28 days thereafter for the issuance of the order now impugned before us, the entire proceedings spanning 493 days had exceeded deadlines stipulated in the Customs House Agents Licensing Regulations, 2004 as well as in the successor regulations. It is seen from the impugned order that the licensing authority had not offered any justification for deviation from the timelines stipulated in the said Regulations. In this connection, our attention has been drawn to the order[2] of the Tribunal in *AB Paul &*

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[1] [no. 11/100]
[2] [final order no. A/85907/2023 dated 2nd June 2023]

Company v. Principal Commissioner of Customs (General), disposing of appeal[3] challenging order[4] of Principal Commissioner of Customs (General), Mumbai, which drew upon the judgement of the Hon'ble High Court of Bombay in *Principal Commissioner of Customs (General), Mumbai v. Unison Clearing P Ltd [2018 (361) ELT 321 (Bom)],* to hold that

> *'14. Though the said decision has categorically held that time-lines in the Regulations are to be deemed as 'directory', the context is not without significance. It was held that setting aside of revocation, at the appellate level, by resort to ascertainment of conformity with time-lines, would defeat the intent of Regulations that is substantively elaborate in enacting framework for supervisory oversight of customs brokers. Nonetheless, the Hon'ble High Court of Bombay also noted that, without justification for delay in completion of proceedings demonstrated by findings on the contributory negligence of the notice-broker, the licencing authority is not permitted to take shelter behind 'directory' nature of the time-lines. Impliedly, the time-lines are deemed to be directory at the appellate stage and an order of detriment under the authority of Regulations is, in circumstances of non-adherence to times lines, not tenable in the absence of justification for delay. '*

3. There being no justification offered for the undue delay in initiation of proceedings under the regulations as well as in concluding the enquiry thereof, the lack of adherence to stipulations that are

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[3] [customs appeal no. 86451 of 2022]
[4] [order-in-original no. 11/CAC/PCC(G)/SJ/SBS Adj. dated 13th May 2022]

directory only to the extent that the delay had occurred at the instance of the customs broker is a breach of the mandate of the regulations.

4. On this ground, we set aside the impugned order and allow the appeal without going to the merit.

(Order pronounced in the open court on 12/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*