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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CUSAA 8/2016 & CM 4292/2016**

OVERSEAS AIR CARGO SERVICES ..... Appellant
Through Mr. M.P. Devnath with Mr. Abhishek Anand and Mr. Yogendra Aldak, Advs.

versus

COMMISSIONER OF CUSTOMS (GENERAL)
NEW DELHI, ... Respondent
Through Mr. Pramod Kumar Rai, Senior Standing Counsel with Mr. Deepak Anand and Mr. Pushkar Kr. Singh, Adv.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

ORDER

% **20.07.2016**

1. This appeal is directed against the final order dated 16th September 2015 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') dismissing the appeal preferred by the Appellant against the order dated 10th April 2015 passed by the Commissioner of Customs (General), Delhi revoking the Customs House Agent (CHA) license of the Appellant.

2. The background facts are that a special investigation was conducted by the Customs Special Investigating Branch (SIIB) on 12th January, 2010 wherein 17 shipping bills pertaining to five exporters namely M/s Satkar

Exports, M/s. Ideal Exports, M/s Varun Garments, M/s Reliable Overseas and M/s. Real Exports, filed by CHA M/s Sunil Dutt were intercepted and on examination it was noticed that it was an attempt at showing exports for claiming fraudulent drawback. The collective declared free on board (FOB) value in respect of all 17 shipping bills was Rs. 2,99,13,121/- and drawback amount claimed was Rs. 31,40,877/-. The goods exported were declared as 'Rayon Scarves' but on examination the goods were found to be of very poor quality and over invoiced. There was also some discrepancy relating to the quantity of the goods. Efforts to locate the addresses of the exporters failed. The addresses disclosed were found to be fictitious. Also, the CHA M/s. Sunil Dutt failed to produce any of the exporters.

3. When the details of the previous exports in relation to the aforementioned five firms were taken out of the EDI system, it was noticed that three earlier shipping bills dated 13th August 2009 of M/s Reliable Overseas had been filed by the Appellant. On the ground that there was an attempt at showing export for the purpose of fraudulent claiming drawback, a Show Cause Notice (SCN) was issued on 6th July 2010 to the above mentioned five exporters and CHAs including the Appellant. The SCN proposed imposition of penalty under Sections 114 (i), 114 (ii) and 117 of the Customs Act, 1962 ('Act').

4. The SCN dated 6th July 2010 was adjudicated by the Commissioner of Customs (Export) by Order-In-Original dated 25th February 2011. The penalty of Rs. 25,000/- imposed upon the Appellant was paid by it.

5. On 14th October 2011 another SCN was issued to the Appellant under the

Custom House Agents Licensing Regulations, 2004 ('CHALR, 2004') asking the Appellant to show cause why the CHA license issued to it under Regulation 20 of CHALR, 2004 should not be revoked and why the entire security deposit made by the Appellant should not be forfeited.

6. The Appellant submitted a reply to the second SCN on 10th November 2011. For a period of more than three years thereafter no proceedings took place. The Appellant states that a personal hearing before the Inquiry Officer, viz., the Assistant Commissioner of Customs, was held on 8th January 2015 in which the Appellant *inter alia* pointed out that the time limits as mandated under the CHALR, 2004, as replaced by Customs Broker Licensing Regulations, 2013 (CBLR, 2013) had not been adhered to. Written submissions raising, *inter alia*, the issue of time limits, were made by the Appellant by letter dated 14th January 2015.

7. The Inquiry Officer submitted a report on 16th January 2015 and this was forwarded to the Appellant by the Assistant Commissioner of Customs (Policy) by a letter dated 23rd January 2015. The Inquiry Officer held the Appellant to be liable for penalty for violation of Regulations 13(a), 13(d), 13(e) & 13(o) of CHALR, 2004 read with the corresponding provisions of the CBLR 2013.

8. The Appellant submitted his comments to the Inquiry Officer *inter alia* reiterating that the mandatory time limits under Regulation 22 of CHALR, 2004 had not be complied with. A personal hearing was afforded to the Appellant on 25th February 2015. The Appellant also filed written submissions on 23rd February 2015.

9. On 10th April 2015, an order in original was passed by the Commissioner of Customs (General) confirming the revocation of the CHA license of the Appellant under Regulation 20 read with Regulation 22(7) of CHALR, 2004/ CBLR, 2013.

10. The further appeal filed by the Appellant was dismissed by the CESTAT by the impugned order.

11. A perusal of the impugned order reveals that the CESTAT proceeded on the basis of the seriousness of the violation. It observed:

> "Having regard to the blatant and serious violation of the CHALR 2004 as mentioned above, it cannot be said that the penalty awarded is unreasonable and revocation imposed by the Commissioner is arbitrary or unreasonable....."

12. Although the CESTAT noted the submission of the Appellant regarding mandatory nature of the time limits under CHALR 2004, in paragraph 3 of the impugned order, it failed to return any finding on the said aspect.

13. This Court has in a series of judgments dealt with the question of mandatory nature of time limits set out in CHALR, 2004 and the corresponding provisions under the CBLR, 2013. This Court has in the following judgments reiterated the mandatory nature of the time limits set out in the CHALR, 2004 and corresponding provisions in the CBLR, 2013:

(i) Order dated 29th April 2016 in WP(C) 3071/2015 [***Mr. Sunil Dutt, through Proprietor v. Commissioner of Customs (General), New Customs House***];

(ii) Order dated 12th May 2016 in CUSAA 25/2015 [***Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General)***];

(iii) Order dated 24th May 2016 in WP(C) No. 1734 of 2016 [***HLPL Global Logistics Pvt. Ltd. v. The Commissioner of Customs (General***)];

(iv) Order dated 1st June 2016 in WP(C) No. 5300 of 2016 **[*Impexnet Logistic v. Commissioner of Customs (General)*]**.

14. In order dated 25th April 2016 in CUSAA 14/2016 (***Commissioner of Customs (General) v. S.K. Logistics***), the Court took note of the order of the CESTAT impugned in the present appeal. The said order was distinguished on the ground that it dealt with the time limits under Regulation 22 (1) of the CHALR 2004 and not the time limit under Regulation 22(5) of the CHALR, 2004. At that stage, the present appeal was not before the Court. The Court in the said appeal held the revocation of the CHA licence issued to M/s. S.K. Logistics to be bad in law since the time limit for completion of the inquiry in terms of Regulation 22 (5) of the CHALR 2004 had not be adhered to.

15. The SCN dated 14th October 2011 that was issued to the Appellant is the same SCN that was issued to M/s. S.K. Logistics, M/s. Sunil Dutt and M/s. Entire Logistics Pvt. Ltd. The offence report is the same for all the said noticees. It was received on 19th May 2011. In terms of Regulation 22 (1) of the CHALR 2004 (which corresponds to Regulation 20 (1) of the CBLR 2013), the SCN had to be issued within ninety days from 19th May 2011, i.e. on or before 18th August 2011. Instead the SCN was issued on 14th October 2011. Secondly, in terms of Regulation 22 (5) of the CHALR 2004, the enquiry had to be completed and a report submitted within 90 days of the

issuance of the SCN under Regulation 22 (1). In the present case, it is not disputed that the inquiry report was submitted only on 16th January 2015 more than three years after the SCN dated 14th October 2011 was issued.

16. In ***Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General)*** (supra) the Court emphasised the mandatory nature of the CHALR as regards the time limits as under:

> "6. The time limits in the CHALR 2004 for issuance of the SCN to the CHA licence holder and completion of the inquiry within 90 days of issuance of such SCN are sacrosanct. The aforesaid time limits were engrafted into Regulation 22 of the CHALR, 2004 by a Notification No. 30/2010-Cus.(N.T.) : dated 8th April, 2010. Simultaneously, the CBEC issued Circular No. 9/2010 dated 8th April 2010 clarifying the procedures governing the suspension and revocation of CHA licence. In para 7.1 of the said Circular, it was noted as under:
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>> "7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of Issue of Show Cause Notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the

> report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations."

> 7. This Court has consistently emphasised the mandatory nature of the aforementioned time limits in several of its decisions. These include the decision in ***Shankar Clearing & Forwarding v. C. C. (Import & General)*** : 2012 (283) E.L.T. 349 (Del.), the order dated 25th April, 2016 passed by this Court in Customs Appeal No. 14/2016 (***Commissioner of Customs (General) v. S.K. Logistics***) and the order dated 29th April, 2016 in W.P.(C) No. 3071/2015 (***M/s. Sunil Dutt v. Commissioner of Customs General) New Customs House)***. The same position has been reiterated by the Madras High Court in ***Sanco Trans Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai*** : (2015) 322 E.L.T. 170 (Mad.) and ***Commissioner v. Eltece Associates*** 2016 (334) E.L.T. A50 (Mad.)."

17. Consequently, following the above decisions, the Court holds that the impugned order dated 10th April 2015 passed by the Commissioner of Customs (General), Delhi revoking the CHA license of the Appellant to be unsustainable in law. The said order and the consequential order dated 16th September 2015 of the CESTAT affirming it are hereby set aside.

18. The appeal is allowed and the pending application is disposed of with no orders as to costs.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 20, 2016/acm