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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
31.
\+ **CUSAA 14/2016**

COMMISSIONER OF CUSTOMS (GENERAL) ..... Appellant
Through Mr Satish Kumar, Senior Standing Counsel.

versus

S.K.LOGISTICS ..... Respondent
Through None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **25.04.2016**

<u>CM 14121/2016</u>

1. Allowed, subject to all just exceptions.

<u>CUSAA 14/2016 & CM 14120/2016</u>

2. This Appeal by the Customs Department is against the impugned order dated 30th September, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal Principal Bench ('CESTAT') in Appeal No. C/52059/2015 filed by the Respondent.

3. A show cause notice ('SCN') dated 14th November 2011 was issued by the Department to the Respondent, who is a holder of Customs House Agent ('CHA') Licence No. R-011/08, under Regulation 22 (1) of the Customs House Agents Licensing Regulations, 2004 (CHALR) asking it to show cause why the licence shall not be revoked. The aforementioned SCN was

issued on the basis of an offence report received on 19th May, 2011.

4. The requirement of the Regulation 22 (5) is that after the inquiry pursuant to the SCN was concluded "the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings and submit his report within ninety days from the date of issue of a notice under sub-regulation (1)". Consequently, in terms of Regulation 22 (5) of CHALR, the report of inquiry had to be submitted within 90 days from 14th November 2011.

5. However, as it transpired, the first Inquiry Officer retired on 8th December 2014 without submitting a report. Thereafter a second Inquiry Officer was appointed who submitted a report on 19th January, 2015. On the basis of the said report, the Commissioner of Customs (General), New Custom House, New Delhi passed an order on 10th April, 2015 revoking the CHA Licence of the Respondent and forfeiting the whole amount of security deposit of Rs. 75,000.

6. The CESTAT has, in the impugned order dated 30th September 2015, noted that the aforementioned order was unsustainable in law since the time limit specified under Regulation 22 (5) of CHALR was not adhered to.

7. It is sought to be urged by Mr Satish Kumar, Senior Standing Counsel appearing for the Department that in another matter arising out the same case involving the revocation of a licence of another CHA, the CESTAT did not accept the plea of the said CHA that there was a violation of the

mandatory time limit under the CHALR 2004 and therefore the revocation of the said licence was bad in law. He relied heavily upon the order dated 16th September, 2015 passed by the CESTAT in Customs Appeal No. 51775/2015 ***[Overseas Air Cargo Services v. Commissioner of Customs (General), New Delhi]***.

8. In the first instance it requires to be noticed that this Court is not bound by the order of the CESTAT for its precedential value. Secondly, a careful perusal of the said order reveals that no plea was urged by the said Appellant CHA before the CESTAT that the mandatory time limit under Regulation 22 (5) of CHALR 2004 was violated. What has been recorded in Para 3 of the said order is a contention of the said Appellant that the time limit under Regulation 22 (1) of CHALR 2004 was not adhered to. That time limit concerns the issuance of show cause notice "within 90 days from the date of receipt of offence report". In that case there was no occasion for the CESTAT to consider whether the violation of the time limit under Regulation 22 (5) of CHALR 2004 for submitting the enquiry report would vitiate the proceedings. Consequently, the order passed by the CESTAT in ***Overseas Air Cargo Services*** (*supra*) is of no assistance to the Appellant.

9. No explanation has been offered by the Department for not adhering to the time limit of ninety days stipulated in Regulation 22 (5) of the CHALR. All that is stated in the memorandum of appeal is that the file could not be traced and therefore there was delay in the SCN being issued under Regulation 22 (1) of the CHALR. The issue here is not so much about in the issuing of the SCN. It is about the unexplained delay of over three years in

submitting the enquiry report. For the said delay the only explanation is that the first inquiry officer retired without submitting the report. This by no means justifies the extraordinary delay of more than three years after the date of the SCN in completing the inquiry and submitting a report. In the circumstances, the view taken by the CESTAT that the consequential order of revocation of licence is vitiated in law cannot be faulted with. No substantial question of law arise for consideration by this Court.

10. Accordingly, the appeal and pending application are dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 25, 2016
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