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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3071/2015**

M/S SUNIL DUTT THROUGH: PROPRIETOR
SUNIL DUTT ..... Petitioner

Through: Mr Subhankar Jha, Advocate.

versus

COMMISSIONER OF CUSTOMS (GENERAL)
NEW CUSTOMS HOUSE ..... Respondent

Through: Ms. Sonia Sharma, Senior Standing counsel with Mr Anant Bali, Inspector for Revenue.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **29.04.2016**

1. The challenge in this petition is to the letter dated 8th December, 2014 issued by the Assistant Commissioner, Customs (Policy), by which a Show Cause Notice (SCN) was issued to the Petitioner by the Commissioner of Customs (Import & General) drawing attention to an earlier SCN dated 14th October, 2011 issued by the Commissioner of Customs (Import and General) proposing to revoke the CHA licence issued to the Petitioner and also forfeit the deposit.

2. The challenge in this petition is also to final inquiry report dated 19th January, 2015 and the consequential adjudication order dated 10th April, 2015 passed by the Commissioner of Customs (General) revoking the

Petitioner's CHA licence, forfeiting the security deposit of Rs.75,000/- and ordering enforcement of the deposit available in the Petitioner's case.

3. At the outset it requires to be noticed that the SCN dated 14th October, 2011 was issued to the Petitioner as well as to M/s S. K. Logistics, M/s Entire Logistics Pvt. Ltd. and M/s Overseas Air Cargo Services. Replies were filed to the SCN by the Petitioner as well as the other noticees. As far as the Petitioner was concerned, reply was filed way back on 18th January 2012. For almost 3 years thereafter, no proceedings took place. The Petitioner made a representation on 19th November, 2014 to the Commissioner of Customs drawing attention to Regulation 22 of the Customs House Agents Licensing Regulations, 2004 ('CHALR') and in particular to Regulation 22(5) which requires the inquiry report be submitted by the Deputy Commissioner or the Assistant Commissioner within 90 days from the date of issue of notice. It was pointed out that the Petitioner's licence has been suspended prior to the issuance of the SCN, that he had suffered heavy losses and hence was in dire circumstances.

4. In response to the above representation, on 9th December 2014, the impugned letter dated 8th December 2014 was issued requiring the Petitioner to submit a reply within 15 days thereof. No reference was made in the said letter to the fact that the Petitioner had already replied to the earlier SCN dated 14th October 2011, which was referred to in the said letter. No response was also given to the representation by the Petitioner dated 19th November, 2014.

5. The above facts were brought to the attention of the Commissioner of

Customs by the counsel for the Petitioner by letter dated 23rd December 2014. It was, *inter alia,* pointed out that the officer who had issued the letter dated 9th December, 2014, i.e., Mr O. P. Yadav, Assistant Commissioner had himself been reappointed as the Inquiry Officer in the matter and this was in replacement of the earlier Inquiry Officer. The said reappointment took place more than 3 years after the initiation of the proceedings. The Petitioner's counsel characterized this as an abuse of law and requested that the Petitioner's CHA licence be restored. Another detailed representation was made by the counsel of the Petitioner on 8th January, 2015.

6. On 19th January, 2015 Mr O. P. Yadav, Assistant Commissioner submitted his inquiry report pursuant to the SCN issued to the Petitioner and the other CHAs. A copy of the said report was furnished to the Petitioner on 23rd January, 2015. The conclusion in the Inquiry Report was that the CHAs, including the Petitioner, had violated Regulations 13(a), 13(d), 13(e) and 13(o) of CHALR, 2004 and, therefore, were liable for suitable action.

7. The Petitioner informed the Commissioner of Customs, through his counsel by letter dated 23rd February 2015, of his intention to approach this Court against the above action. Thereafter, the present petition was filed in which notice was issued to the Respondent on 25th March, 2015.

8. During the pendency of the writ petition, the Petitioner was able to obtain the copy of an Order-in-Original dated 10th April, 2015 from the co-noticee M/s S. K. Logistics. The Petitioner also learnt that M/s S. K. Logistics had filed an appeal before the Customs Excise and Service Tax Appellate Tribunal ('CESTAT') which had by order dated 30th September, 2015 set

aside the Order-in-Original dated 10th April, 2015 on the ground that the time limit prescribed under Regulation 22 of CHALR had not been adhered to.

9. The Petitioner maintained an application being CM No.9361/2016 seeking permission to amend the present writ petition on the ground that he had not been served with the copy of the said Order-in-Original dated 10th April, 2015 and, therefore, sought to challenge the said order as well. The Petitioner on 15th January, 2016 wrote to the Commissioner of Customs seeking copy of the said order.

10. The above application for amendment was allowed by this Court by an order dated 8th April, 2016 and the amended writ petition was taken on record. The Respondents were permitted to file reply to the amended writ petition.

11. It must be noticed that by order dated 25th April 2016 in Customs Appeal No. 14/2016, this Court dismissed the appeal filed by the Customs Department against the order dated 30th September 2015 passed by the CESTAT allowing the Appeal No. C/52059/2015 filed by M/s S. K. Logistics against the very same Order-in-Original dated 10th April, 2015 of the Commissioner revoking the CHA licence of M/s. S. K. Logistics.

12. The Court in the said order upheld the order dated 30th September, 2015 of the CESTAT which held that the Order-in-Original dated 10th April, 2015 was unsustainable in law since the time limit stipulated in the Regulation 22(5) of the CHALR was not complied with. The Court negatived the plea

of the learned counsel for the Department that in its order in Customs Appeal No. 51775/2015 ***[M/s Overseas Air Cargo Services v. Commissioner of Customs (General), New Delhi]***, the CESTAT had taken a different view. The Court noted that, in its order in ***Overseas Air Cargo Services*** *(supra)* the CESTAT had not even noticed the legal position arising from the non-compliance of the time limit under Regulation 22(5) CHALR for submitting an Inquiry Report and, therefore, that order was of no assistance to the Department. The Court in para 9 of its order dated 25th April, 2016 held as under:

> "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."

13. The present case is identical to that of M/s S. K. Logistics so far as the failure to adhere to the time limit under Regulation 22(5) of CHALR is concerned. The only explanation offered by the Department is that the earlier inquiry officer appointed to adjudicate the SCN dated 14th October,

2011 retired and it was only after the new inquiry officer was appointed by the letter dated 8th December, 2014 that the inquiry could be completed and a report submitted on 23rd January 2015. In the case of S. K. Logistics, this Court held that this was hardly a justification for not adhering to mandatory time limit set out in Regulation 22(5) of the CHALR.

14. For the above reasons, and those already set out in the order dated 25th April, 2016 in Customs Appeal No.14/2016, this Court quashes the Order-in-Original dated 10th April, 2015 passed in the case of the Petitioner. Any action taken consequent to the impugned order dated 10th April, 2015 and the Inquiry Report dated 23rd January 2015 that led to its passing shall also stand quashed.

15. The Petitioner's CHA licence is stated to have expired in the meanwhile and not renewed. The Respondent will process the Petitioner's application for renewal of its licence in accordance with law without any unnecessary delay. The writ petition is allowed in the above terms with no order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 29, 2016
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