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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 1734/2016 & CM 7432/2016**

HLPL GLOBAL LOGISTICS PVT. LTD ..... Petitioner
Through: Mr. Priyadarshi Manish, Ms.Anjali J. Manish, Mr.Rahul Ranjan, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL)..... Respondent
Through: Ms. Sonia Sharma, Senior Standing counsel with Mr. N.K. Koushik (Supdt.) Legal

With

\+ **W.P.(C) 2134/2016 &CM 9154/2016**

HLPL GLOBAL LOGISTICS PVT. LTD. ..... Petitioner
Through: Mr. Priyadarshi Manish, Ms.Anjali J. Manish, Mr.Rahul Ranjan, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL)..... Respondent
Through: Ms. Sonia Sharma, Senior Standing counsel with Mr. N.K. Koushik (Supdt.) Legal

With

\+ **W.P.(C) 2135/2016 & CM 9155/2016**

HLPL GLOBAL LOGISTICS PVT. LTD. ..... Petitioner
Through: Mr. Priyadarshi Manish, Ms.Anjali J. Manish, Mr.Rahul Ranjan, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL)..... Respondent
Through: Ms. Sonia Sharma, Senior Standing counsel with Mr. N.K. Koushik (Supdt.) Legal

And

\+ **W.P.(C) 4397/2016 & CM 18389/2016**

HLPL GLOBAL LOGISTICS PVT.LTD ..... Petitioner
Through: Mr. Priyadarshi Manish, Ms.Anjali J. Manish, Mr.Rahul Ranjan, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL)..... Respondent
Through: Ms. Sonia Sharma, Senior Standing counsel with Mr. N.K. Koushik (Supdt.) Legal

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **24.05.2016**

Dr. S. Muralidhar, J:

1. These four writ petitions by HLPL Global Logistics Pvt. Ltd. challenge four separate orders of suspension, three of them dated 24th February 2015 and one dated 2nd May 2016 passed by the Commissioner of Customs (General) in exercise of the powers conferred under Regulation 19(1) of the Customs Brokers Licensing Regulations 2013 ('CBLR 2013').

2. The background facts are that the Petitioner was granted licence No. R-49/Del/Cus/2012 on 10th October 2012 by the Commissioner of Customs

(I&G), New Delhi under Regulation 9(1) of the Customs House Agents Licensing Regulations 2004 ('CHALR 2004') to work as customs house agent ('CHA')/ Customs Broker (CB). The said license was valid up to 9th October 2022. It is stated that several exporters and importers approached the Petitioner for clearance of their respective consignments and the Petitioner after verifying the documents in discharge of its obligations under the CHALR 2004 (which was replaced by CBLR 2013, with effect from 21st June 2013) cleared the consignments.

3. As far as W.P. (C) Nos. 1734, 2134 and 2135 of 2016 are concerned, an offence report dated 16th February 2015 was received from the Directorate of Revenue Intelligence ('DRI') by the customs authorities on 18th February 2015 wherein nine CBs were found to have violated Regulation 11 of CBLR 2013. One of the nine CBs mentioned therein was the Petitioner.

4. On the basis of the offence report, the Petitioner's licence was suspended for the first time on 24th February 2015 invoking powers under Regulation 19(1) of the CBLR 2013.

5. A personal hearing was granted to the Petitioner on 2nd March 2015. In terms of Regulation 19(2) of the CBLR 2013. On 23rd March 2015 an order was passed by the Commissioner of Customs (General) confirming suspension of the Petitioner's CB licence which had earlier been suspended by order dated 24th February 2015.

6. At this stage, it is necessary to refer to Regulation 20 (1) of the CBLR 2013 which reads as under:

> "20. Procedure for revoking licence or imposing penalty:
>
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs."

7. In the present case as far as W.P.(C) Nos. 1734, 2134 and 2135 of 2016 are concerned, the relevant date for the purposes of issuance of show cause notice ('SCN') to the Petitioner was ninety days from the date of receipt of the offence report by the customs authority from the DRI, which was 18th February 2015. The SCN was issued by the Commissioner of Customs on 2nd February 2016 to the exporters including M/s Saay Exim Pvt. Ltd. M/s Evolution export, A.A. Enterprises, M/s Jain Enterprises for violation of various provisions of the Customs Act, 1962 (CA). It is important to note that this SCN was not issued in terms of Regulation 20(1) of the CBLR 2013. In any event no SCN was issued to the Petitioner under CBLR 2013 within a period of ninety days from the receipt of the offence report from DRI.

8. It is now stated by Ms. Sonia Sharma, learned counsel for the Respondent on instruction of Mr. S.N. Ojha, Deputy Commissioner, who is present in

Court, that a corrigendum was issued on 1st February 2016 by the Joint Commissioner, ICD, PPG, New Delhi to the aforementioned SCN by adding the name of the Petitioner to the said SCN. However, no copy of such corrigendum is placed before the Court. Mr Priyadarshi Manish, learned counsel for the Petitioner, however, states that till date the Petitioner has not received any such corrigendum. In any event, the said corrigendum if at all was only to the SCN under the CA. It cannot mean that by adding the name of the Petitioner by way of corrigendum dated 1st February 2016 to the SCN dated 19th September 2015, the date of SCN qua the Petitioner would relate back to the date of the SCN as initially issued i.e., 19th September 2015.

9. On 2nd February 2016, the impugned SCN was issued to the Petitioner under Regulation 20 of the CBLR 2013, requiring the Petitioner to show cause as to why the Petitioner's CB license should not be revoked and security forfeited for failure to comply with Regulation 11 of CBLR 2013 and be asked to pay penalty under Regulation 22 read with Regulation 20 of the CBLR 2013.

10. The fact that the SCN was issued to the Petitioner on 2nd February 2016 is not disputed by the Respondents. It has been sought to be submitted by Ms. Sonia Sharma, learned counsel for the Respondent that the above SCN should be read along with the corrigendum issued on 1st February 2016 to the SCN dated 19th September 2015 issued under the CA, and therefore should be treated as having been issued on 19th September 2015 itself.

11. The Court is unable to agree with the above submission for the simple

reason that the SCN dated 19th September 2015 was not issued under the CBLR 2013. Further, it was not issued to the Petitioner. By adding the name of the Petitioner to the said SCN dated 19th September 2015 issued under the CA by way of a corrigendum dated 1st February 2016, it cannot be said that an SCN was issued to the Petitioner under the CBLR 2013 on 19th September 2015.

12. It bears reiteration that in terms of Regulation 20(1) of the CBLR 2013, the SCN had to be issued to the Petitioner within ninety days from the date of the receipt of the offence report, i.e., within 90 days from 18th February 2015. Clearly the SCN under Regulation 20 (1) of the CBLR 2013 was not issued within ninety days after 18th February 2015.

13. This Court in an order dated 12th May 2016 [***Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General)***]emphasised the mandatory nature of the time limits specified under Regulation 22 (1) of the CHALR, 2004 which corresponds to Regulation 20 (1) of the CBLR 2013. The Court in paras 6 and 7 of the said order observed 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 *Schankar 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.)*."

14. Consequently, the Court is satisfied that as far as the W.P.(C) Nos. 1734, 2134 and 2135 of 2016 are concerned, the Petitioner not having been issued the SCN within ninety days of receipt of the offence report by the Customs, the SCN dated 2nd February 2016 issued to it by the Commissioner of Customs (General) is clearly unsustainable in law. The order dated 23rd March 2015 confirming the suspension of the Petitioner's CB licence cannot also be continued on account of the failure to issue the SCN and therefore complete the enquiry within the time limit specified in Regulation 20.

Consequently the said order dated 23rd March 2015 is hereby declared to be invalid and set aside on that basis.

15. Now turning to W.P.(C) No. 4397 of 2016, the facts of the case are that the offence report dated 28th March 2016 was received by the Customs from the Joint Commissioner, SIIB-export on 31st March 2016. This concerned the alleged illegal imports made by the three parties, i.e., M/s Rajkumar Impex, C.P. Exporters and Raj Kumar Impex (P) Ltd. Imports were made by the said three parties under 50 bills of entry. Upon further investigation it was revealed that more than ten CHAs/CBs including the Petitioner were involved. By an order dated 2nd May 2016, the Petitioner's CB licence was suspended.

16. A perusal of the said order dated 2nd May 2016 reveals that para 2 mentions the names of the above three parties and the fact that the licenses were issued to the said parties under the Vishesh Krishi & Gram Udyog Yojna by the Director General of Foreign Trade ('DGFT'); that the said licences were used by the said parties for payment of customs duties for the respective imports. It then sets out the names of 10 CBs including the Petitioner.

17. However, specific to the Petitioner in para 4 of the said order dated 2nd May 2016, the names of the two importers mentioned are Chaman Lal & Sons and Shyama Corporation. They are shown to have cleared the import consignments through B/Es dated 19th and 20th December 2012 respectively. Para 7 of the said order then proceeds to state as under:

> "7. Whereas Out of 50 Bills of Entry, in respect of one (01) Bill of Entry dated 07.06.2013 mentioned above, Customs Broker M/s HLPL Global Logistics Pvt. Ltd. found to have cleared the consignment of an importer namely M/s Universal Enterprises and in which they used the licenses of various IEC codes. Details of the same are given in the table of para 4 above."

18. It is rightly pointed out by learned counsel for the Petitioner that the name of M/s Universal Enterprises in respect of one B/E dated 7th June 2013 does not find mention in the table in para 4 of the said order dated 2nd May 2016. Therefore there is an obvious error in the impugned order. It is not clear as to the precise nature of the alleged violation committed by the Petitioner and whether it was qua the transactions involving M/s Universal Enterprises or the transactions involving Chaman Lal & Sons and Shyama Corporation. What appears to have happened is that in drafting the suspension orders qua each of the 10 CHAs/CBs there has been a mix up of facts. This by itself is sufficient to show that there was a total non-application of mind to the facts involving the Petitioner as far as the decision to suspend its CB licence was concerned.

19. The other point urged by learned counsel for the Petitioner is that the decision to suspend the license should be for the reason that there is an emergent need to do so in terms of Regulation 19 of the CBLR 2013. The decisions in ***Commissioner of Customs v. National Shipping Agency, 2008 (226) ELT 46 (Bom.); East West Freight Carriers (P) Ltd. Vs. COLLR of Customs, Madras 1995(77) ELT 79 (Mad.) and N.C. Singha & Sons v. UOI 1998 (104) ELT 11 (Cal)***, support the above submission. The Court,

however, need not further dwell on this aspect since the Court is satisfied that the impugned suspension order dated 2nd May 2016 which has been challenged in W.P.(C) No. 4397 of 2016 is vitiated on account of the obvious factual errors as already noticed.

20. The suspension order dated 2nd May 2016 is hereby set aside. However, this will not prevent the Respondents from issuing a fresh SCN to the Petitioner provided it is in compliance with Regulations 19 and 20 of the CBLR 2013.

21. The petitions and pending applications are disposed of in the above terms.

22. The date earlier fixed in the petitions stands cancelled.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 24, 2016
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