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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
24.
\+ **W.P.(C) 5300/2016**

IMPEXNET LOGISTIC ..... Petitioner

Through Mr Anjali Manish and Mr Rahul Ranjan, Advocates.

versus

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

Through Ms Sonia Sharma, Senior Standing Counsel with Ms Neha Chugh, Advocate for R1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **01.06.2016**

1. The challenge in this writ Petition is to an order dated 1st June, 2015 passed by the Respondent, i.e. the Commissioner of Customs (General) New Delhi, whereby the Petitioner's Customs Broker (CB) licence was revoked and the bank guarantee of Rs.75,000/- was directed to be forfeited.

2. From the list of dates submitted by Ms Sonia Sharma, learned counsel for the Respondent, it is seen that a show cause notice (SCN) had been issued under Section 124 of the Customs Act, 1962 ('CA') by the Commissioner of Customs on 27th December 2012 in respect of an alleged illegal import by M/s NGR International. The Petitioner had acted as the customs house agent (CHA) with respect to the said transaction. The Respondent states that the

offence report dated 8th January, 2013 was received in the office of the Respondent on 31st January, 2013. On the basis of the above offence report, the CB licence of the Petitioner was suspended by the Respondent on 13th February, 2013. The said suspension was confirmed by an order dated 11th April, 2013.

3. Against the confirmation of the suspension, the Petitioner filed an appeal before the Customs Service Tax Appellate Tribunal (CESTAT). The CESTAT in the said appeal asked the Customs Department to submit a report regarding the status of investigation. It appears that thereafter on 9th December, 2013 show cause notice (SCN) was issued to the Petitioner under the provisions of the Customs House Agent Licensing Regulations, 2004 ('CHALR') [since replaced by the Customs Broker Licensing Regulations 2013 ('CBLR 2013')] read with Section 159-A of the CA asking the Petitioner to show cause why its CB licence issued should not be revoked..

4. The admitted position, therefore, is that the SCN was issued beyond the period of 90 days from the date of receipt of the offence report by the Respondent. This was clearly in contravention of Regulation 20 (1) of the CBLR 2013 (corresponding to Regulation 22(1) of the CHALR).

5. Meanwhile the CESTAT by an order dated 31st December 2013 set aside the order dated 11th April, 2013 passed by the Respondent confirming the suspension of the Petitioner CB licence pending the outcome of the inquiry pursuant to the SCN issued on 9th December 2013.

6. From the list of dates submitted by the Respondent, it appears that an enquiry report dated 4th March 2015 was forwarded by the Inquiry Officer only on 10th March 2015 which was 13 months after the suspension of the licence. It is thereafter that the impugned order dated 1st June, 2015 was passed after affording the Petitioner an opportunity of being heard.

7. It is plain that in the case there has been a violation of the time limits set out in Regulation 20 of the CBLR (corresponding to Regulation 22 of the CHALR). In the decision dated 12th May 2016 in Cus. AA 25/2015 ***[Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General)]*** this Court held:

> "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, CUSAA 25/2015 & W.P.(C) 3973/2015 Page 4 of 5 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. A 50 (Mad.)*."

8. Recently by an order dated 24th April, 2016 in W.P.(C) No. 1734/2016 ***[HLPL Global Logistics Pvt. Ltd. v. The Commissioner of Customs (General)]*** this Court reiterated that the time limits in Regulation 20 of the CBLR/Regulation 22 of the CHALR are sacrosanct.

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December 2013, i.e., beyond the mandatory period of 90 days from the date of receipt of the offence report by the Respondent, i.e., 31st January, 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN.

10. Consequently, the Court set asides the impugned order dated 1st June, 2015 passed by the Respondent revoking the licence of the Petitioner.

11. The writ petition is allowed in the above terms. No orders as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 01, 2016
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