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

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**CUSAA 25/2015**

INDAIR CARRIER PVT. LTD.

..... Appellant

Through: Dr Prabhat Kumar and Mr Ammu  
Suresh, Advocates.

versus

COMMISSIONER OF CUSTOMS  
(GENERAL)

..... Respondent

Through: Ms Sonia Sharma, Senior Standing  
counsel

**AND**

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**W.P.(C) 3973/2015**

INDAIR CARRIER PVT. LTD.

..... Petitioner

Through: Dr Prabhat Kumar and Mr Ammu  
Suresh, Advocates.

versus

COMMISSIONER OF CUSTOMS (GENERAL)  
& ANR.

..... Respondents

Through: Ms Sonia Sharma, Senior Standing  
counsel.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE VIBHU BAKHRU**

**ORDER**

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**12.05.2016**

**Dr. S. Muralidhar,J.:**

1. The present appeal and Petition filed by M/s. Indair Carrier Pvt. Ltd., through its Director Mr. Adarsh Mundhra, concerns the failure of the Customs authorities to complete the proceedings concerning the revocation of the Customs House Agent ('CHA') licence of the Petitioner/Appellant within the time period stipulated in Regulation 22(5) of the Customs House Agents Licensing Regulations, 2004 ('CHALR').

2. While, the appeal of the Appellant is directed against the order dated 11<sup>th</sup> March, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') in Appeal No. C/51800/2014-CU(DB), the writ petition pertains to the subsequent Show Cause Notice issued by the Respondents to the Petitioner on 17<sup>th</sup> March, 2015.

3. The facts in brief are that the CHA licence issued to the Petitioner was suspended on 6<sup>th</sup> September, 2013. In terms of Circular No.9/2010 issued by the Central Board of Excise and Customs ('CBEC'), the proceedings are required to be completed within nine months from the intimation of offence report received by the concerned authorities. In the present case, the preliminary report concerning the offence regarding the alleged illegal export was received by the Respondents on 16<sup>th</sup> August, 2013 from the Directorate of Revenue Intelligence (DRI). Under Regulation 22(1) of the CHALR, 2004 the Show Cause Notice (SCN) was required to be issued within 90 days of the offence report. Under Regulation 22(5), the Deputy Commissioner or the Assistant Commissioner of Customs, as the case may be, was required to prepare a report recording his findings and submit his

report within 90 days from the date of SCN issued in terms of Regulation 22(1) of the CHALR, 2004.

4. In the present case, the SCN was not issued even by the time the CESTAT heard the appeal of the Petitioner/Appellant against the order of suspension dated 6<sup>th</sup> September, 2013. In the impugned order dated 11<sup>th</sup> March 2015, the CESTAT has noted this fact but has strangely directed the Respondents to complete the proceedings in terms of Regulation 22 of the CHALR within 60 days from that date failing which the suspension shall stand revoked and the licence would become operative.

5. Pursuant to the above order of the CESTAT, for the first time, the impugned SCN dated 17<sup>th</sup> March 2015 was issued by the Respondents to the Petitioner and a report was submitted by the Inquiry Officer on 16<sup>th</sup> April 2015. Consequent to the said report, on 7<sup>th</sup> May 2015 the Order-in-Original was passed revoking the licence of the Petitioner under Regulation 22(1) read with Regulation 22(7) of the CHALR, 2004 and also forfeiting the security deposit of Rs.75,000/-.

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 8<sup>th</sup> April, 2010. Simultaneously, the CBEC issued Circular No. 9/2010 dated 8<sup>th</sup> 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:

“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 25<sup>th</sup> April, 2016 passed by this Court in Customs Appeal No.14/2016 (*Commissioner of Customs (General) v. S. K. Logistics*) and the order dated 29<sup>th</sup> 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.)*.

8. Consequently, the Court is unable to sustain the directions issued by the CESTAT in the impugned order dated 11<sup>th</sup> March 2015, permitting the Respondents to proceed with and complete the inquiry within a further period of 60 days from the date of the impugned order of the CESTAT despite noting that the mandatory time limits under the CHALR had not been adhered to. The impugned order dated 11<sup>th</sup> March 2015 of the CESTAT is accordingly set aside.

9. As a result, the SCN issued by the Respondents to the Petitioner pursuant to the order of the CESTAT on 17<sup>th</sup> March 2015, the consequential inquiry report dated 16<sup>th</sup> April, 2015 and the order dated 7<sup>th</sup> May 2015 passed by the Respondents revoking the Petitioner's licence are also held to be unsustainable in law and are hereby set aside.

10. The CHA licence of the Petitioner/Appellant that stood revoked will stand revived forthwith. In the event that the Petitioner's original CHA licence has expired in the meanwhile, its application for renewal will be processed by the Respondents without unnecessary delay. The appeal and the writ petition are allowed in the above terms with no order as to costs.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**MAY 12, 2016**  
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