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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.730 of 2016 and
C.M.P.No.5921 of 2016

Santon Shipping Services,
18-B, Ceeyum Building, Second Floor,
South Raja Street, Tuticorin - 628 008.

... Appellant/Appellant

Vs.

1.The Commissioner of Customs
Customs House,
New Harbour Estate, Tuticorin-628 004.

2. The Customs, Excise And Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
No.26, Haddows Road, Chennai 600 006.

... Respondents/Respondents

Prayer : The appeal filed under Section 130 of the Customs Act, 1962, against the final order No.41288/2015 dated 28.09.2015 in Appeal No. C/349/2012-DB passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Chennai in the matter of appeal against Order-in-Original C.No.VIII/13/33/2003 - CHAL dated 21.08.2012 passed by the 1st respondent.

For Appellant : Mr.G.Derrick Sam
For Respondents: Mrs.R. Hemalatha

JUDGEMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This civil miscellaneous appeal has been preferred under Section 130 of the Customs Act, 1962 assailing the final order

No.41288/15 dated 28.9.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (hereinafter referred to as (CESTAT-SZ) confirming the Order-in-Original dated 21.8.2012 passed by the first respondent.

2. On 07.4.2016, while admitting this appeal, the following questions of law were framed:

"(i) Whether the orders for revocation of licence of the appellant is without jurisdiction in that the show cause notice for the same was issued beyond the mandatory time limit of 90 days as fixed by Regulation 20(1) of the CHALR, 2004 ?

(ii) Whether the Tribunal has acted in excess of its jurisdiction in that it confirmed the order of the Commissioner revoking the licence of the appellant firm in the absence of any evidence whatsoever as to the alleged violation of the provision of the CHALR by the appellant firm ? and

(iii) Whether the Tribunal has acted in excess of jurisdiction in that it confirmed the revocation of licence as ordered by the Commissioner of Customs, Chennai in the light of the fact that there is no evidence whatsoever as to the mis-declaration of goods made by the importer or is there any evidence directly or inferential to prove that the appellant firm committed any act or omitted to do an act legally required to be done so as to warrant revocation of licence so as to deprive the appellant firm's right to pursue the lawful possession as CHA?"

3. The necessary facts which are required to be noticed for the disposal of this appeal are as follows:

(i) The appellant herein is a partnership firm in the name and style of M/s.Santon Shipping Services. It was granted license by the Commissionerate of Customs, Tuticorin to function as Custom House Agent (CHA) with license No. TUT/17/2003.

(ii) The appellant firm also was permitted to operate as CHA at Chennai as well as in Mumbai.

(iii) While so, the Directorate of Revenue Intelligence (DRI) had conducted an investigation with regard to the import of goods described as scrap metal (HMS 1 & 2) by an importer, namely, M/s.J.R.Smelters Pvt.Ltd., Chennai. The bill of entry No. 616429 was filed on 02.09.2010 by the appellant for the purpose of clearing the goods on behalf of the importer, which

transaction was, infact on the basis of intelligence report, intercepted, consequent there to investigation was launched by the DRI.

(iv) The said goods were examined on 16.9.2010 and 17.9.2010 at Sanco Container Freight Station and it was found that the goods were used rail / railway sleeper not scrap metal HMS 1 & 2, as declared by the importer, in the bill of entry.

(v) In view of the said mis-declaration, the Commissioner of Customs (Imports), Chennai, by proceedings dated 30.09.2010 issued an order against the appellant, prohibiting him from operating as Custom House Agent at Chennai Custom jurisdiction.

(vi) Consequent upon the aforesaid action, the first respondent by his proceedings dated 04.10.2010 suspended the CHA license of the appellant as the said license was originally issued by the Tuticorin Customs Commissionerate.

(vii) Thereafter, by further proceedings dated 07.10.2011, the first respondent by invoking Regulation 20(3) of the Custom House Agent Licensing Regulations, 2004 (hereinafter referred to as, 'CHALR') passed an order of continuation of suspension of licence of the appellant, until further orders.

(viii) Subsequently, the first respondent issued a show cause notice dated 18.11.2011 under Regulation 22 of CHALR, by which, the first respondent directed the appellant to submit his written explanation to the show cause notice, along with all the evidences based upon which it intend to defend its case, albeit, within 30 days of the receipt of the notice.

(ix) In response to the said show cause notice, the appellant on 20.12.2011 sent a reply. In the said reply, the appellant gave its explanation in respect of each of the charges levelled against it.

(x) Consequent upon the said show cause notice and the reply submitted by the appellant, the first respondent appointed an Assistant Commissioner, as an Inquiry Officer, who, after conducting the inquiry, gave his Inquiry Report on 09.4.2012. In the said Inquiry Report, the Inquiry Officer gave his findings that the appellant had failed to discharge its obligations under Regulations 10 and 13 (a), (b), (d), (e), (f) and (o) and 19(8) of CHALR, 2004. Based on this conclusion, the report concluded that the charges levelled against the appellant as contained in the show cause notice stood proved. The Inquiry Officer further recommended action of revocation of the license of the appellant and also forfeiture of the security deposit of the appellant.

(xi) Thereafter, a copy of the Inquiry Report was furnished to the appellant. The appellant was directed to give its reply

to the Inquiry Report. Pursuant to which, the appellant submitted its reply to the Inquiry Report, on 22.5.2012.

(xii) Thereafter, on considering the report of the Inquiry Officer as well as the reply filed by the appellant, the first respondent vide his Order-in-Original dated 21.8.2012, revoked the CHA license dated 01.08.2003 issued to the appellant, and also forfeited the security deposit in the sum of Rs.75,000/- furnished by the appellant.

(xiii) Being aggrieved by the said Order-in-Original passed by the first respondent, the appellant preferred an appeal before the CESTAT. The said appeal was finally decided by the CESTAT via its impugned order dated 28.9.2015, the CESTAT by this order has upheld the Order-in-Original passed by the first respondent by rejecting the said appeal filed by the appellant. It is this order of CESTAT, qua which appeal has been preferred by the appellant.

4. The first respondent has filed a counter affidavit in this appeal, where, the facts of the case, in brief has been given.

5. Insofar as the grounds raised by the appellant, the reply of the first respondent, through the counter is, that the appellant has violated the various conditions of Regulation 13 of the CHALR, 2004. The main contention in the counter and the case of the first respondent is that, as per the Bill of Entry dated 02.09.2010, the description of the goods imported was Scrap Metal (HMS 1 & 2) which falls under CTH 72044900. The value was declared as Rs.41,10,251/- @ 170 US \$ per metric tonne. Based on such declaration of the goods to be imported, the importer had also claimed the exemption under customs Notification No. 21/2002 S.No.200. The said containers were lying in SANCO CFS. While so, the DRI had sent information to the Deputy Commissioner (Docks) incharge of SANCO CFS vide DRI letter dated 09.09.2010 to have examination of the goods covered under the said Bill of Entry in the presence of the officers of the DRI. The examination of the goods took place on 16.9.2010 and 17.9.2010 and it was revealed that all the 20 containers contained used rail / railway sleepers as against the declared items, namely, Scrap Metal (HMS 1 & 2). The said goods i.e., rail / railway sleepers fell under CTH 7302, in respect of which, the exemption claimed under Notification No. 21/2002 Sl.No.200 was not available. Moreover, the value of the used rails is also very high as compared to the HMS Scrap. Therefore, in view of the mis-declaration of the nature of the goods as well as the value of the goods, the 20 containers, totally weighing 501 metric tonnes, valued at Rs.1 crore (approximately), were seized for violation of the provisions of the Customs Act.

6. The further case of the respondent is that on further scrutiny of the documents, filed by the appellant, on behalf of the importer, further lapses committed by this appellant were revealed. Though initially the appellant had got the documents endorsed, for examining the goods at SANCO CFS, from the Deputy Commissioner on 02.09.2010, however, subsequently, the appellant obtained an endorsement in another set of similar documents, for examination of goods at Gateway CFS, from another Deputy Commissioner on 09.09.2010, whereas the 20 containers were not lying at Gateway CFS and were only lying at SANCO CFS.

7. The further case of the Revenue is that, the appellant while acting as CHA appeared to have lent his signature to some other persons as well. Further the appellant had, not verified and obtained any documents from importer directly, as per the annexure to Board Circular No.9/10 CUS dated 08.4.2010.

8. In respect of these charges, which were found to be against the appellant, the appellant on both occasions i.e., at the time of giving reply to the show cause notice, and also at the time of giving reply to the Inquiry Officer's report, rebutted these charges and gave a detailed explanation in respect of each of the charges levelled against him.

9. In respect of the main charge against the appellant that the appellant had obtained endorsement from two different Deputy Commissioners, one for SANCO CFS and another for Gateway CFS, the appellant has given its defence vide its reply dated 20.12.2011 to the show cause notice. The said reply at paragraph 7 is reproduced hereunder:

" With reference to (a) and (b) above, the fact remains that the goods were in a protected area of the customs, viz. Sanco CFS and were examined by the Customs Officers. On 9.9.10, D.C.(Docks) has marked the Bill of Entry initially to A.O. ICBC, then scored out 'ICBC' and marked it to A.O. GATEWAY for 100% examination by destuffing of specified containers. Our client, in his statements has explained that he was in Mumbai at the relevant time. In any case, assigning an officer for examination of the cargo was an administrative exercise by the D.C. (Docks) over which our client had no role and he was stationed in Chennai normally (he works from Tuticorin) and, it is not disputed that, in fact, at the relevant time our client was in Mumbai. Our clients' employees have explained to him that the endorsement taken for the

second time was taken by mistake. As such, this was a human error. It had no consequence to the Customs Revenue, as it was only a procedure for examination of the goods. Obviously, the D.C.(Docks) was administratively allocating the work to different officers - not necessarily in the same CFS. Fairly, no malafides are alleged on our client on this account in the show cause notice. Hence, this is an occurrence of no material consequence. In other words, our clients did not act with any motive. Nothing to the contrary is even alleged in the show cause notice. Submission of documents at the Gateway CFS for examination was in accordance with the endorsement of the D.C.(Docks) as explained above. In the above manner, the charge made in paragraph 5(a) of the show cause notice was due to mistake and it was beyond the knowledge of our client who was not in station. The charge made in paragraph 5(b) was consequential to the D.C.(Docks)'s direction mentioned in 5(a). In other words, 5(a) and 5(b) go together in which our clients had no knowledge and error occurred at operational level."

10. Like that in respect of the other two charges that the CHA appears to have lent his signature for some other person without verifying and obtaining any documents from the importer directly as per the annexure to Board Circular No.9/2010 CUS dated 08.4.2010, a detailed reply dated 20.12.2011 had been given by the appellant, in this regard.

11. However, the Inquiry Officer vide report, dated 09.4.2012, has given a finding that those charges framed against the appellant have been proved and therefore, he recommended revocation of the licence and forfeiture of security deposit.

12. We have heard Mr. G.Derrick Sam, the learned counsel appearing for the appellant and Mrs. Hemalatha, the learned standing counsel appearing for the 1st respondent.

13. The learned counsel appearing for the appellant would raise the first ground of attack against both the Order passed in Original as well as the order of CESTAT, which are impugned herein, that the very show cause notice issued by the first respondent on 18.11.2011 itself, was without jurisdiction, as the said show cause notice should not have been issued beyond the statutory period of 90 days, as contemplated under Regulation 22(1) of the CHALR, 2004. In this regard, the learned

counsel for the appellant relied upon Regulation 22(1) of the CHALR, 2004 which reads thus:

"22.Procedure for suspending or revoking licence under Regulation 20:-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20."

14. He also relied upon Regulation 20(1) which reads thus:

"20. Suspension or revocation of licence'-

(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security,"

15. The learned counsel for the appellant would further submit that, insofar as the case of the appellant is concerned, the DRI had sent offence report dated 21.9.2010, pursuant to which only, order of prohibition dated 30.9.2010 was passed by the Commissioner of Customs, Chennai, and the appellant's CHA licence was suspended on 04.10.2010 by the first respondent. The said suspension order was directed to be continued by the Order-in-Original of the first respondent dated 07.10.2011.

16. He would further state that the offence report was dated 21.09.2010, if at all any show cause notice has to be issued to initiate proceedings for revocation of licence of the appellant, such show cause notice should have been issued within 90 days from the date of offence report. Though 90 days time was over as early as on 21.12.2010, the show cause notice, admittedly, was issued by the first respondent only on 18.11.2011, i.e., well beyond the 90 days limitation as contemplated under Regulation

22(1) of CHALR, 2004.

17. He would therefore, submit that the issuance of the said show cause notice itself, was without jurisdiction and unlawful, in view of the mandatory provision available in CHALR, 2004. Therefore, the entire proceedings which culminated in the order of revocation of CHALR licence of the appellant, passed by the first respondent, is vitiated.

18. Therefore, the learned counsel for the appellant would state that, while preferring appeal to the CESTAT, the appellant had raised the following ground as a first ground for consideration before the CESTAT which reads thus:

"At the outset, it is submitted that the proceedings relate to a bill of entry filed on 02.09.2010. Though the office of the respondent acted against the importer, immediately based on the investigation made by DRI and also the licence of the appellant's firm was placed under suspension, the show cause notice in terms CHA Licensing Regulations itself was issued only on 18.11.2011 by the respondent. Subsequently, the impugned order has been passed after due process of law on 21.08.2012. The time taken by the respondent in this connection for completion of the proceedings under the regulations is not within the time frame specified in the Regulations of the CHA Licensing Regulations 2004. On this very ground, the impugned order cannot be legally sustained as it was not issued in conformity with the requirements of Regulation 22."

19. The learned counsel would further state that, though such a ground which went to the root of the jurisdiction was raised and urged before the CESTAT, there is no findings given on this aspect by the CESTAT in the impugned order. Therefore, the said issue has once again been raised before this Court in the instant appeal, as in the grounds of appeal before this Court, the appellant has raised the following substantial question of law which reads thus:

"Whether the orders for revocation of licence of the appellant is without jurisdiction in that the show cause notice for the same was issued beyond the mandatory time limit of 90 days as fixed by Regulations 20(1) of the CHALR, 2004?"

20. Though the learned counsel appearing for the appellant has made submissions on merits on other issues raised in the instant appeal, since he has raised this jurisdictional issue in

terms of Regulation 22 of the CHALR, 2004 as the main ground, he has relied upon the following decisions in support of the said contentions:

- (i) Sanco Trans Ltd Vs. Commissioner of Customs (Seaport/Import), Chennai [2015 (322) E.L.T. 170 (Mad.)]
- (ii) Commissioner of Customs (Seaport/Import), Chennai Vs. Sanco Trans Ltd [2016 (334) E.L.T. 274 (Mad.)]
- (iii) Overseas Air Cargo Service Vs. Commissioner of Customs (General), New Delhi [2016(340) E.L.T.119 (Del.)]
- (iv) Indair Carrier Pvt. Ltd Vs. Commissioner of Customs (General) [2016(337) E.L.T.41.(Del.)]
- (v) Commissioner of Customs (General) Vs. S.K. Logistics [2016 (337) E.L.T.39(Del.)]
- (vi) Sunil Dutt Vs. Commissioner of Customs (General), NCH [2016 (337) E.L.T.162(Del.)]
- (vii) Impexnet Logistic Vs. Commissioner of Customs (General) [2016 (338) E.L.T. 347 (Del.)]
- (viii) Sowparnika Shipping Service Vs. Commissioner of Customs [High Court Order in WP.No.37796 of 2016]

21. Insofar as the said contention made by the learned counsel for the appellant on the aspect of jurisdiction to issue a show cause notice beyond the prescribed period of limitation was concerned, Mrs.R.Hemalatha, the learned standing counsel appearing for the 1st respondent would state that, the appellant did not raise that issue of limitation at the time of issuance of show cause notice, as the appellant chose to reply to the show cause notice, and thereafter, participated in the inquiry. Even after the Inquiry Report, the appellant had chosen to reply to the further show cause notice issued by the first respondent. Hence, the appellant could not have raised, the said issue of limitation either before the CESTAT when it filed appeal against the Order-in-Original or before this Court.

22. The learned standing counsel would further submit that, on merits, there is no plausible explanation or reason available with the appellant with respect to the charges framed against it, as they stood proved. Therefore, the violation of Regulations of CHALR, 2004, especially, Regulations 10, 13 (a) (b) (d) (e) (f) (o) and 19(8), stood established.

23. The learned standing counsel would further state that, the appellant has violated a number of regulations of CHALR,

2004 and being a CHA, it cannot plead innocence or ignorance as, admittedly, endorsements were obtained two times from different Deputy Commissioners i.e., one from SANCO CFS and another from GATEWAY CFS, whereas the fact remains that the goods contained in the 20 containers were not lying in GATEWAY CFS. The goods were in fact lying only at SANCO CFS.

24. The learned standing counsel would further state that, based on this factual matrix, the CESTAT has found in the impugned Judgment that, the CHA prepared another set of documents and got the endorsement for examination of goods from another Deputy Commissioner, Customs located at different CFS i.e., GATEWAY CFS on 09.9.2010.

25. The learned standing counsel would invite our attention to the relevant finding in this regard written in paragraph 5 of the impugned Judgment of CESTAT, which reads thus:

"We find that the role of CHA has been clearly brought out by the adjudicating authority vide para 16 to para 24, wherein, it is clearly said that once the goods are found to be misdeclared by the importer, and the same was ordered for detailed examination on 02.09.2010 from D.C.Customs, SANCO CFS. Whereas, we find that the CHA prepared another set of documents and got the endorsement for examination of goods from another D.C. Customs located at different CFS i.e. Gateway CFS on 09.09.2010. He submitted the said documents for examination at Gateway CFS where the goods were not lying and obtained the examination report. Whereas the goods are actually lying under SANCO CFS, which was to be examined by D.C.Customs of that FS. Thus, it clearly proves the involvement of CHA and his employees. CHA cannot plead innocence."

26. The learned standing counsel would also submit that in support of the conclusion reached by the Tribunal, the CESTAT has heavily relied upon Shri Kamakshi Agency Vs. Commissioner of Customs, Madras [2001 (129) ELT 29 (Mad)]. In the said Judgment, the role of a CHA has been clearly spelt out and if we apply the said principles as enunciated in Kamakshi's case as has been rightly applied by the CESTAT in the impugned Judgment, the case, of the appellant on merits cannot be accepted. It was submitted that ultimately, the CESTAT has found that the appellant deliberately presented the documents to another CFS and obtained a fraudulent examination report.

27. The learned standing counsel would further submit that, when the appellant was not in a position to give a proper reply to the allegations as to why two set of documents were presented to two different Deputy Commissioners positioned or in-charge of two separate CFS, namely, SANCO CFS and GATEWAY CFS, whereas the goods in question had been laid only at SANCO CFS, the natural corollary to be reached by any forum would be the one, which has been reached by both the first respondent, who passed the Order-in-Original and the CESTAT, in the order impugned herein.

28. Therefore, the learned standing counsel would state that, on merits, since the appellant does not have a case, the issue raised on behalf of the appellant qua limitation in terms of Regulation 22(1) of the CHALR, 2004 ought not to be entertained.

29. We have considered the said submissions made by both sides and we have given our anxious consideration to the points raised by the respective learned counsel.

30. Though much effort had been taken by both sides on the merits of the issue, as to whether the charges framed against the appellant are sustainable and whether the said charges have been proved, in view of the decision we propose to take on the issue of limitation, in content of the provisions of Regulation 22(1) of the CHALR, 2004, we are of the view that, those issues need not be gone into, at this juncture.

31. Insofar as the issue of limitation is concerned, it is the case of the appellant that, admittedly, the offence report of DRI was generated on 21.09.2010. If the said date is taken into account for the purpose of issuance of show cause notice under Regulation 22(1) of CHALR, 2004, the show cause notice should have been issued on or before 21.12.2010, but the fact remains that the show cause notice was issued only on 18.11.2011. Therefore, whether or not the belated show cause notice issued beyond 90 days would be fatal to the entire proceedings which culminated in the Order-in-Original, whereby, the licence of the appellant stood revoked and its security deposit has got forfeited, is to be examined.

32. In order to find out the answer to the aforesaid question, the Judgments relied upon by the learned counsel appearing for the appellant can be adverted to. In Sanco Trans Ltd Vs. Commissioner of Customs (Seaport/Import), Chennai, 2015 (322) E.L.T 170 (Mad.) (supra), a learned Judge of this Court has dealt with almost similar situation, as in that case, the offence report was received on 29.8.2012 and the show cause notice was issued on 05.3.2015. Therefore, invoking the mandatory requirement of Regulation 22(1), the learned Judge held that, the said show cause notice was beyond the limitation

period.

33. The said Judgment referred to above, when, appealed, was confirmed by a Division Bench of this Court in Commissioner of Customs (Seaport/Import), Chennai Vs. Sanco Trans Ltd, 2016 (334) E.L.T. 274 (Mad.) (supra). In another Judgment of the Division Bench of the Delhi High Court, in Overseas Air Cargo Service Vs. Commissioner of Customs (General), New Delhi, 2016 (340) E.L.T. 119, (Del.) (supra), the Division Bench following Indair Carrier Pvt. Ltd Vs. Commissioner of Customs (General), 2016 (337) E.L.T. 41 (Del.) (supra) has allowed the contention that the limitation prescribed under CHALR, 2004 had to be mandatorily followed.

34. The Division Bench in Indair Carrier Pvt. Ltd Vs. Commissioner of Customs (General), 2016 (337) E.L.T. 41 (Del.) (supra), while considering the similar issue, has held as follows:

"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:

"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.)."

35. Almost similar view has been taken consistently by the Division Bench of Delhi High Court in Commissioner of Customs (General) Vs. S.K. Logistics, 2016(337) E.L.T.39(Del.), and Sunil Dutt Vs. Commissioner of Customs (General), NCH, 2016(337) E.L.T.162(Del.)

36. In Impexnet Logistic Vs. Commissioner of Customs (General), 2016 (338) E.L.T. 347 (Del.), the same Division Bench while taking the same view, has held as follows:

"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)] [2016 (338) E.L.T.365 (Del.)] 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."

37. That apart, atleast in two Judgments of this Court, where a similar issue came up for consideration, before one of us sitting singly (Rajiv Shakdher, J), a similar view was taken. The first Judgment is dated 15.12.2016, which was passed in W.P.No.37796 of 2016, in the matter of M/s. Sowparnika Shipping Services Vs. The Commissioner of Customs, Chennai and another wherein, the Judgments referred to hereunder were noticed and followed:

- i) A.M. Ahamed & Co. V. Commissioner of Customs (Imports), Chennai- 2014 (309) E.L.T. 433 (Mad)
- ii) Masterstroke Freight Forwarders P. Ltd., V. Commissioner of Customs (I), Chennai - 2016 (332) ELT 300 (Mad.)
- iii) Sunil Dutt V. Commissioner of Customs (General), NCH - 2016 (337) ELT 162 (Del.)
- iv) Impexnet Logistics V. Commissioner of Customs (General) - 2016 (338) ELT 347 (Del.)
- v) Overseas Air Cargo Services V. Commissioner of Customs (General), New Dekgu- 2016 (340) ELT 119 (Del.)

38. Ultimately, the Court held that the show cause notice issued beyond the limitation period was not sustainable.

39. Following the said Judgment in M/s. Sowparnika Shipping Services Vs. Commissioner of Customs, Chennai and another, one of us (Rajiv Shakdher, J) allowed yet another writ petition i.e., W.P.No.44344 of 2016, in the matter of M/s. Patriot Freight Logistics System Vs. Commissioner of Customs, Commissionerate - VIII, Chennai and two others vide Judgment dated 03.02.2017.

40. Also, another learned Judge of this Court (R. Mahadeven, J) in 2016 332 E.L.T. 300 (Mad.) in the matter of Masterstroke Freight Forwarders P. Ltd. Vs. CC (1), Chennai-1 after having considered a number of Judgments, has ultimately,

concluded as follows:

"50. It is also to be noted that every act of breach by the Broker would entitle the authorities to initiate proceedings from the date of knowledge of the offence. It is only if the time limit is strictly followed, swift action can be initiated against the Customs Brokers and the authorities can also be made accountable. The Regulations only contemplate initiation of proceeding by issuance of notice within 90 days. While, making out a prima facie case, the respondents ought to have, without any shadow of doubt, treated the word shall in Regulation 11 as mandatory and not directory. Therefore, when a time limit is prescribed in Regulations, which empowers action in Regulation 18 and procedure in Regulation 20 (1), the use of the term shall cannot be termed as directory. It is pertinent to mention here that the CBLR, 2013 have replaced the CHA Regulations. The CHA regulations did not have any time limit to complete the proceedings. Therefore, by a Circular 09/2010 dated 08.04.2010, the necessity to include a time limit for initiating action was addressed by the Board after field inspection and by a notification dated 08.04.2010, amendments prescribing time period for initiating action and completing proceedings was made. The same was given effect by notification dated 20.01.2014. Whereas, under the CBLR, 2013 having found the necessity to prescribe a period, the Central Board, the statutory authority had included the same in the Regulations itself, when they were brought into force. Therefore, when a time limit is prescribed in Regulations, which empowers action under Regulation 18 by following the procedure in Regulation 20 (1), the use of the term "shall" cannot be termed as directory. Under such circumstances, the rule can only be termed as Mandatory."

41. In view of the aforesaid Judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.

42. Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because

of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored.

43. It is not the case of the 1st respondent that the 90 days limitation contemplated under Regulation 22(1), is directory. It is also not the case of the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.

44. Since the offence report was dated 22.9.2010 and the show cause notice, admittedly, was issued only on 18.11.2011, there can be no doubt that the said show cause notice was issued well beyond the period of limitation of 90 days.

45. Whatever be the claim and counter claim on the merits, in this appeal can, in our view, they get shadowed by the failure on the part of the Revenue in not acting in time, by issuing the show cause notice, within the period as contemplated under Regulation 22(1) of CHALR, 2004.

46. Therefore, we are of the considered view, and in fact have no hesitation to hold so that, the Revenue has not issued the show cause notice dated 18.11.2011 within the period of limitation prescribed under Regulation 22(1) CHALR, 2004 and thus, the consequent proceedings involving revocation of the appellant's CHA licence and forfeiture of its security deposit, is unlawful.

47. Since these aspects, have not been considered and answered by the CESTAT in the order impugned, inspite of the specific ground having been raised by the appellant, we are constrained to set aside the impugned order.

48. Accordingly, the substantial questions of law are answered in favour of the assessee and against the revenue.

49. Resultantly, this appeal is allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

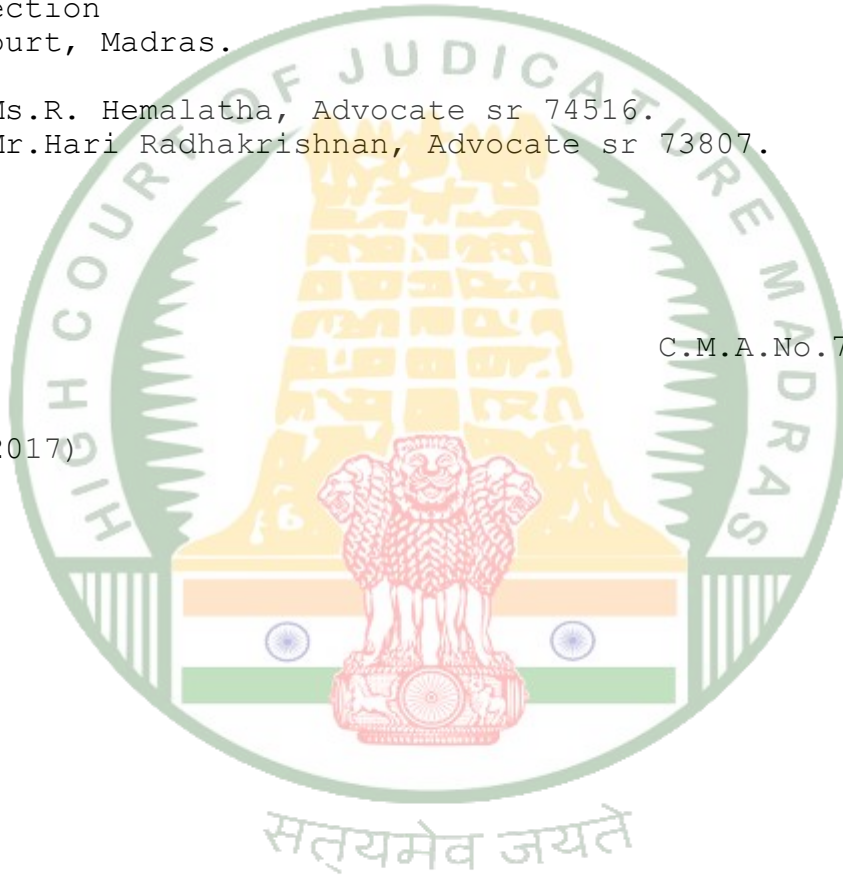
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To

- 1.The Commissioner of Customs
Customs House,
New Harbour Estate, Tuticorin-628 004.
 - 2.The Customs, Excise And Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
No.26, Haddows Road, Chennai 600 006.
 3. The Section officer
V.R. Section
High Court, Madras.
- +1 CC to Ms.R. Hemalatha, Advocate sr 74516.
+1 Cc to Mr.Hari Radhakrishnan, Advocate sr 73807.

C.M.A.No.730 of 2016

NM(CO)
SP(08/11/2017)



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