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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ CUSAA 1/2017

M/S A.P. ENTERPRISES ..... Appellant
Through: Mr. Prem Ranjan Kumar, Advocate.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL) ..... Respondent
Through: Mr. Harpreet Singh and Ms. Namrata Bharti, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **09.05.2017**

Dr. S. Muralidhar, J.:

1. This appeal under Section 130 of the Customs Act, 1962 ('Act') is directed against the impugned Final Order dated 17th October, 2016 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') in Appeal C/52456 filed by the Appellant herein.

2. While admitting this appeal on 16th January, 2017, the following question was framed for consideration:

> "Did the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the facts and circumstances of this case fall into error in directing the Competent Authority to conclude the investigation and take a final decision in the inquiry, contrary to the Customs Broker Licensing Regulation, 2013 (CBLR), as interpreted by this Court in its

various judgments?"

3. The facts in brief are that the Appellant was issued a Customs Broker Licence by the Commissioner of Customs (I&G), New Delhi valid upto 9th October, 2021. A letter dated 28th March, 2016 was written by the Joint Commissioner (SIIB-Exports) informing the Commissioner, Customs General Commissionerate, New Custom House, New Delhi about the receipt of information from the Additional Commissioner, Customs House, Tuticorin about alleged incorrect use of licences issued under the Vishesh Krishi and Gram Udyog Yojana by 27 importers through 50 bills of entry. 10 customs brokers, including the Appellant, were found to have cleared the import consignment of those 27 importers using these *ab initio* null and void licences.

4. On 19th April, 2016, on the basis of the said investigation, the Appellant's licence was placed under immediate suspension under Regulation 11 (d) & (e) of the Customs Broker Licensing Regulation, 2013 ('CBLR 2013').

5. The case of the Appellant is that despite repeated requests, the documents relied upon were not supplied. The Commissioner of Customs (General) by an order dated 1st June, 2016 proceeded to revoke the Appellant's licence without following the procedure outlined under the CBLR 2013. The Appellant approached the CESTAT challenging the revocation order dated 1st June, 2016. That appeal was disposed of by the CESTAT by the following order dated 17th October, 2016:

> "1. Heard Shri Prem Ranjan Kumar, learned counsel for the Appellants and Shri K. Poddar, learned AR for Revenue.

> 2. It appears that by the impugned order dated 1st June 2016, the Commissioner has suspended the licence of the Appellant with reference to offence of 2013.
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> 3. After considering the totality of the Appellant's argument, we direct the Appellate authority to conclude investigation which is still pending, within a period of three months by providing an opportunity to the Appellant, as per law and thereafter, the Competent Authority will take final decision.
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> 4. On the aforesaid direction, the appeal as well as miscellaneous application are disposed of."

6. It is after the above order that a Show-Cause Notice ('SCN') dated 16th December, 2016 was issued by the Commissioner of Customs (General) to the Petitioner in terms of Regulation 20 of the CBLR 2013.

7. This Court has in ***Overseas Air Cargo Services v. Commissioner of Customs (General), New Delhi 2016 (340) ELT 119 (Del)*** emphasised that if the mandatory time limits under the CBLR 2013 for various stages is not adhered to the actions taken thereunder including the revocation of licences would be vulnerable to being invalidated. In the said decision, the Court referred to earlier precedents including ***Indair Carrier Private Limited v. Commissioner of Customs (General) 2016 (337) ELT 41 (Del)*** and ***Commissioner v. S.K. Logistics 2016 (337) ELT 39 (Del).***

8. The Court finds that in the present case those time limits have been given a complete go by. To recapitulate the dates, an intimation was sent to the Commissioner of Customs (General) dated 28th March, 2016 and on that basis, the Appellant's licence was placed under suspension on 19th April,

2016. In terms of Regulation 19 (2) of the CBLR 2013, within 15 days of the suspension of license under Regulation 19(1), an opportunity of hearing was to be given to the Appellant. That time limit was not adhered to. The Appellant was given an opportunity of hearing only on 1st June, 2016 on which date its licence was revoked.

9. Regulation 20 (1) of the CBLR 2013 is categorical in that prior to revocation of the licence, a SCN in writing has to be issued to the Customs Broker. The SCN has to be issued within a period of 90 days from the date of receipt of the 'offence report'. The SCN in the present case was issued only on 16th December 2016, more than six months after the revocation of the Appellant's licence. It was issued in fact after the impugned order dated 17th October, 2016 of the CESTAT.

10. It requires to be straightway noticed that the CESTAT could not have and should not have extended the time for the Respondent to issue the SCN beyond what has been provided under Regulation 20 (1) of the CBLR 2013. The CESTAT ought to have noted Regulation 20 (1) CBLR which mandates issuance of a SCN within 90 days of the receipt of the offence report. The CESTAT should have ascertained when in fact the offence report was issued and whether any SCN was issued within 90 days thereof. Instead the CESTAT got its facts wrong. It termed the order dated 1st June 2016 as an order suspending the Appellant's licence when in fact that order revoked the licence. Secondly, the CESTAT failed to refer to the CBLR. Thirdly, there was no question of the CESTAT granting further time of three months to the Respondents "to conclude the investigation which is still pending". There

was no power under the CBLR that enabled the CESTAT to grant such time. Further what was under challenge before it was the revocation order dated 1st June 2016. The CESTAT had to pronounce on its validity, but it failed to address that issue.

11. At this stage, Mr. Harpreet Singh, learned counsel for the Respondent volunteers that the offence report of 28th March, 2016 was only a 'preliminary' and not a 'final report' and, therefore, the period of 90 days under Regulation 20 (1) of the CBLR 2013 for issuance of the SCN did not begin to run on 28th March, 2016. Mr. Singh referred to the following averments in the counter-affidavit filed in the present matter:

> "2....In fact based on the preliminary report dated 28.03.2016 received from the Joint Commissioner, SIIB Export, TKD, the Customs Broker license of the appellant was suspended vide order dated 19.04.2016 which was confirmed by the Competent Authority vide Order dated 01.06.2016 after considering the submission of the appellant and the gravity of the case. However, as per directions of learned CESTAT, the offence report was taken from DRI vide letter dated 18.11.2016 and Show Cause Notice under the provisions of CBLR, 2013 was issued to the appellant on 16.12.2016 which was well within 90 days of provisions of CBLR as well as per direction of the Hon'ble CESTAT."

12. The Court repeatedly asked Mr. Singh whether there was in fact a 'final' offence report as claimed by the Department and whether such 'final' offence report was dated 16th December, 2016. Mr. Singh could not give any affirmative answer. What transpired after the order of the CESTAT is evident from para 13 of the SCN dated 16th December 2016 which reads as under:

"13. In compliance of directions given by the Hon'ble CESTAT, a letter dated 20.10.2016 was sent to the Investigating Agency (ICD, Tughlakabad) seeking final investigation report/ SCN issued under Customs Act, 1962 within 5 days in response to which it was conveyed vide letter C. No. VIII/ICD/10/TKD/SIIB - Exp./INV/Tuticorin Lic./192/2015/38427 dated 25th October 2016 by the Additional Commissioner (SIIB), ICD, TKD that the case has been transferred on 23rd September 2016 to the Directorate of Revenue Intelligence (HQ), New Delhi. Accordingly, a letter dated 7th November 2016 & DO letter dated 18th November 2016 were sent to the Principal ADG, DRI, New Delhi to provide the copy of investigation report/ SCN issued under Customs Act, 1962."

13. What, therefore, appears to have happened is that it is only after order of the CESTAT that the Respondent wrote to the Investigating Agency on 20th October, 2016 seeking the 'final investigation report'. The Respondent was informed by its letter dated 25th October, 2016 by the Additional Commissioner (SIIB), ICD, TKD that the case had been transferred to the Directorate of Revenue Intelligence (HQ), New Delhi on 23rd September, 2016. Accordingly, letters dated 7th November, 2016 and 18th November, 2016 were sent to the Principal ADG, DRI, New Delhi to provide the copy of the investigation report / SCN issued. There is no information on whether there is any such 'final' investigation report and what the date of such final report is. Unless the Department is able to show that there is a final report which is dated not later than 90 days prior to the SCN dated 16th December, 2016, there would be no compliance with the mandatory time limit set down under Regulation 20 (1) of CBLR 2013. Nowhere in the counter-affidavit is there a positive averment that a 'final' offence report was dated within the period of 90 days prior to 16th December 2016, when the SCN was issued to the Appellant for the first time.

14. The Court, accordingly, finds that the entire action in proceeding to revoke the Appellant's licence was contrary to CBLR 2013. There was an abject failure to comply with the mandatory time limits set out under Regulation 20 (1) of the CBLR 2013 since there was no SCN issued in terms thereof to the Appellant prior to the revocation of its licence. Also, the SCN was not issued within 90 days of the receipt of the offence report.

15. Further, as already observed hereinbefore, the Court also finds that the CESTAT acted without jurisdiction in extending the time for investigations to be completed by the Respondent without realising that the revocation order was invalid as it was in clear violation of the CBLR 2013.

16. Accordingly, the impugned order dated 17th October, 2016 of the CESTAT, the consequential SCN dated 16th December, 2016 as well as the revocation order dated 1st June, 2016 issued by the Respondent are hereby set aside.

17. The appeal is allowed in the above terms. No costs.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 09, 2017
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