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

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\+ **CUSAA 20/2017**

INNOVATIVE CARGO SERVICES
THROUGH: PARTNER SHRI BINOD KUMAR ..... Appellant
Through: Mr. Prem Ranjan Kumar with Ms. Vidushi Shubham, Advocates.

Versus

COMMISSIONER OF CUSTOMS (GENERAL) ..... Respondent
Through: Mr. Sanjeev Narula, Senior standing counsel with Mr. Abhishek Ghai, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL

O R D E R

% **23.05.2017**

S. Muralidhar, J.:

1. This appeal by M/s. Innovative Cargo Services, under Section 130 of the Customs Act, 1962 (‘Act’) is directed against the impugned order dated 30th March 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (‘CESTAT’) in C/A/52636/2017-CU(DB).

2. **Admit.**

3. The following question of law is framed for consideration:

(i) Was the CESTAT is justified in directing the concerned Authority to issue a show cause notice (‘SCN’) within 15 days for complete the proceeding within the prescribed time of three months, notwithstanding the Customs Broker Licensing Regulations 2013 ('CBLR 2013')?

4. The background facts are that the Appellant is a Customs Broker holding Customs Broker Licence valid till 2018.The Appellant is engaged in customs clearance work within in the jurisdiction of Delhi Commissionerate and adjoining Inland Container Deport (ICD), Tughlakabad.

5. In March 2016, the Directorate of Revenue Intelligence ('DRI') initiated an investigation into the exports effected by one Mr. Ramesh Wadhera and his son Mr. Rahul Wadhera on the ground that they indulged in fraudulent availment of drawback by exporting inferior and sub-standard quality readymade garments of different kinds through various bogus firms and by resorting to over invoicing of goods.

6. In the course of search on the premises of Mr. Ramesh Wadhera and Mr. Rahul Wadhera on 18th March 2016 by the DRI, details emerged of various CHAs who had filed shipping bills for them, and this included the Appellant. Five months later, the DRI by a letter dated 24th August 2016 forwarded a report to the Commissioner of Customs (General), New Delhi, the Respondent. On the basis of the said report, the Respondent by the impugned order dated 31st August 2016 ordered the immediate suspension of the Appellant's licence for alleged violation of Regulations 11 (a), (d), (e) and (n) of the CBLR 2013. This suspension order was later confirmed by the Order-in-Original dated 27th September 2016.

7. In the interregnum, on the basis of the investigation of the DRI, the Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi issued to the exporters a SCN dated 16th September 2016 proposing confiscation of alleged over-invoiced goods. The name of the Appellant was also included in the SCN for the purpose of imposition of penalty in respect of the exports of six exporters.

8. Aggrieved by the suspension of its licence, the Appellant filed an appeal under Section 129A of the Act read with Regulation 21 of CBLR 2013 before the CESTAT.

9. On 30th March 2017 the CESTAT passed the impugned order, the operative portion of which reads thus:

> "5. After hearing both sides and on perusal of the records, it appears that in the instant case the licence was suspended long back and since then notice has not been issued. This is the question of livelihood of not only of the Assessee-Appellants but also of their and their employees' family. Hence, we direct the concerned authorities to issue the show cause notice within 15 days and complete the proceedings within the prescribed time limit of three months thereafter by passing a speaking and reasonable order. The Assessee-Appellants assured full cooperation to the Department.
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> 6. With the above observations, the appeal stands disposed of."

10. The present appeal was heard for the first time on 21st April 2017. Notice was directed to issue and was accepted on behalf of the Respondent

by Mr. Sanjeev Narula, learned Senior standing counsel. A short affidavit has been filed by the Respondent in which it has been explained that a post-decisional hearing was afforded to the Appellant on 14th September 2016 in respect of the suspension order dated 31st August 2016. It is further stated that the final assessment order was passed on 27th September 2016. It is submitted that the SCN dated 16th September 2016 was forwarded to the Respondent on 11th April 2017 and therefore, the date of the receipt of the final offence report should be taken to be 11th April 2017.

11. In its rejoinder the Appellant pointed out that after confirmation of the suspension order dated 27th September 2016 the Respondent took no action under Regulation 20 and thereby contravened the time limits set under the CBLR 2013. It was further stated that Circular No. 9/2010 dated 8th April 2010 which was issued in the context of Custom House Agents Licensing Regulation, 2004 (CHLR 2004) equally applied to CBLR 2013 which replaced it. It is submitted that CESTAT travelled beyond its jurisdiction under Section 129B of the Act in granting time to the Respondent to complete the investigation. It is further pointed out that the Respondent received intimation *qua* the offence report on 24th August 2016 and, therefore, that should be the date of communication of the offence report and not the letter dated 11th April 2017 subsequently written.

12. The Court has heard the submissions of Mr Prem Ranjan Kumar, learned counsel for the Appellant and Mr. Sanjeev Narula, learned Senior standing counsel for the Respondent.

13. The facts of the case are not in dispute. After the suspension order was affirmed in terms of Regulation 19 of the CBLR 2013 by order dated 27th September 2016, no steps were taken by the Respondent in terms of Regulation 20 of the CBLR 2013. This required a SCN to be issued within 90 days from the date of receipt of the offence report. In the present case, the SCN was issued only subsequent to the impugned order of the CESTAT on 30th April 2017.

14. The Court is unable to accept the contention of the Respondent that the letter dated 11th April 2017 received from the ICD, Tughlakabad enclosing therewith a copy of the earlier SCN dated 16th September 2016 issued by the exporter as well as the Appellant should be taken as receipt of the 'final offence report'. This is a plain misreading of the facts. As rightly pointed out by the Appellant, if at all, date has to be ascertained for communication of the 'offence report' it has to be letter dated 24th August 2016 on which the date received from the DRI regarding the alleged illegal export.

15. In any event, the CESTAT had no jurisdiction to extend time already set down in the CBLR 2013. Those time limits are sacrosanct as explained by the Court in several decisions including ***Indair Carrier Private Limited v. Commissioner of Customs (General) 2016 (337) ELT 41 (Del), Commissioner v. S.K. Logistics 2016 (337) ELT 39 (Del)*** and ***Overseas Air Cargo Services v. Commissioner of Customs (General), New Delhi 2016 (340) ELT 119 (Del).***

16. The above legal position was reiterated recently by the Court in its order dated 9th May 2017 ***(M/s. A.P. Enterprises v. The Commissioner of***

Customs (General) where in the similar circumstances, the Court sets aside the order of the CESTAT granting the Department three months' time to complete the investigation.

17. For all the aforesaid decisions, the Court answers the question in the negative, i.e., in favour of the Appellant and against the Respondent. It is held that CESTAT was in error in directing the authorities to issue SCN within 15 days and complete the investigation within a further period of three months thereafter contrary to the CBLR 2013. The impugned order of the CESTAT is accordingly set aside.

18. The appeal is allowed but, in the circumstances, with no orders as to costs.

CM No.15012/2017 (Stay)

19. In view of the disposal of the appeal, the application does not survive for consideration and is disposed of.

S.MURALIDHAR, J

VINOD GOEL, J

MAY 23, 2017
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