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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ CUSAA 24/2016

MILLENNIUM EXPRESS CARGO PVT. LTD ..... Appellant
Through: Mr.A.K.Prasad, Advocate with Ms.Priyanka Goel, Advocate.

Versus

COMMISSIONER OF CUSTOMS ..... Respondent
Through: Mr.Sanjeev Narual, Advocate with Mr.Abhishek Ghai, Advocate.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER

% **24.05.2017**

1. This is an appeal under Section 130 of the Customs Act, 1962 (the Act) challenging an order dated 3rd February, 2016 passed by the Custom, Excise and Service Tax Appellate Tribunal (CESTAT) in appeal No. C/A/50156/2016 whereby the appeal of the Appellant against the order dated 22nd April, 2015 passed by the Commissioner of Customs (Respondent) revoking the appellant's Customs House Agent (CHA) license was dismissed.

2. The facts in brief are that sometime in October, 2011 one proprietor of M/s Nikhaar Associates contacted the Appellant for clearance of their consignments. 22 bills of entry (B/E) were filed on behalf of the said entity

by the Petitioner which were cleared by the Customs between 29th October, 2011 and 6th March, 2012.

3. The Directorate of Revenue Intelligence (DRI) undertook a search of the premises of the Appellant on 30th August, 2012. On 31st August, 2012 DRI opened a container in the name of M/s Nikhaar Associates for which no B/E had been filed. The bill of lading filed described the goods as ‘induction cookers’. However, the container was found to contain 48,01,600 foreign brand cigarettes of Indonesian origin concealed therein. The market value of the cigarettes were estimated at Rs.3.10 crores.

4. An offence report was sent by the DRI on 10th September, 2012 to the Respondent. The Appellant’s license was suspended by the Respondent on 28th September/3rd October, 2012 for contravention of Regulation 13(a), 13(d), 13(d), 13(n) and 13(o) of the Customs House Agents Licensing Regulations, 2004 (CHALR).

5. On 17th August, 2012 a post-decisional hearing was granted by the Respondent to the Appellant. This was followed by an order passed by 6th/7th November, 2012 by the Respondent confirming the suspension.

6. On 17th December, 2012 an appeal was filed by the Appellant before the CESTAT against the order passed by the Respondent confirming the suspension. Along with the said appeal, an application for stay was also filed.

7. While the said appeal and application were pending before the CESTAT a

show cause notice (SCN) was issued by the DRI to M/s Nikhaar Associates for smuggling of cigarettes. Penalty was also proposed against M/s Nikhaar Associates and other including the appellant herein. On 30th January 2014, an SCN was issued by the Respondent under Regulation 22 of the CHALR 2004 seeking to revoke the Appellant's CHA license for contravention of Regulation 13(e) and 13(o) of the CHALR.

8. A reply was filed to the said SCN by the Appellant on 27th February, 2014. An enquiry report was submitted on 22nd March, 2014. A W.P.(C) No.2595/2014 was filed by the Appellant before this Court challenging the enquiry report as having been prepared without giving the Appellant a hearing. By order dated 12th May, 2014, this Court quashed the enquiry report and directed the Respondent to give a fresh hearing to the Appellant within four months and within two weeks thereafter pass a fresh order "confirming or revoking the suspension order".

9. It is plain that at this stage, therefore, the issue was concerning the passing an order either confirming or revoking the suspension order. At this stage the question of revocation of the Appellant's license was not being considered.

10. Pursuant to the above order, a personal hearing was fixed and by order dated 8th October 2014, the Respondent confirmed the suspension of the Appellant's license. This rendered the pending appeal of the Appellant before the CESTAT infructuous.

11. Meanwhile, the proceedings pursuant to the SCN dated 13th January

2014 proposing the revocation of the Appellant's license continued. On 29th December, 2014 the Appellant appeared before the Deputy Commissioner for a personal hearing.

12. In the revocation of license proceedings, the enquiry officer submitted a report on 2nd March, 2015 and the Appellant submitted objections against the said report on 1st April, 2015.

13. As far as the suspension of the Appellant's license is concerned, against the refusal by the CESTAT of a stay by its order dated 19th January, 2015, the Petitioner filed Customs Appeal No.7/2015 in this Court. On 25th February, 2015, the Court dismissed the appeal by the following order:

> "1. The petitioner is aggrieved by an order of the CESTAT rejecting the application for stay of the order made under Regulation 20(3) of the Customs House Agents Licensing Regulation, 2004. This Court had at an earlier occasion intervened at the behest of the appellant in Writ Petition No: 2595/2014 directed the respondents to decide whether to confirm or not continue with the suspicion, in terms of Regulation 20(3), after post-decision hearing. Though the decision was not taken within the time granted, the record indicates that the competent authority i.e. the Commissioner issued notice to the appellant and later by an order dated 08.10.2014 decided but confirmed the suspension during the currency of the enquiry under Regulation 22. The CESTAT by the impugned order declined the application for stay of the suspension confirmed under Regulation 20(3), stating as follows:
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> > "2. We find that the impugned order has been issued by the commissioner in pursuance of the High Court of Delhi order dated 12.05.2014. Therefore the contention of the appellant that the earlier final order of suspension

> dated 06.11.2012 under Regulation 20(3) of CHALR,2004 was issued beyond the time limit prescribed there-under (i.e. under CHALR,2004) is of no consequence inasmuch as in para 12 of its order, the High Court especially directed the commissioner to pass a fresh order under Regulation 20(3) ibid. Thus prima the impugned order suffers from no infirmity and therefore, there is no ground to grant stay sought by the applicant. The Stay application is accordingly rejected."
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> 2. We have heard counsel for the appellant and are of the opinion that considering that the order is purely interim and has taken note of the previous order of this Court and also the contentions of the appellant no interference is called for. At the same time this Court is conscious of the fact that enquiry proceedings under Regulation 22 have got prolonged to an extent. The respondents are directed to complete the enquiry proceedings after giving two opportunities to the appellant in accordance with provisions of Regulations and other provisions of law and pass final orders at the earliest preferably within three months from today.
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> The appeal is dismissed in the above terms."

14. In the revocation proceedings, after hearing the Appellant and considering its written submissions, an order dated 22nd April, 2015 was passed by the Respondent revoking the license of the Appellant. The full security amount of Rs.50,000/- deposited by the Appellant was forfeited. The G-Card of the Appellant's employee was also ordered to be surrendered.

15. Aggrieved by the above order of revocation, an appeal was filed before the CESTAT. By the impugned order dated 9th February 2016, the CESTAT dismissed the appeal. The present appeal is against the said order.

16. When the present appeal was first heard on 2nd September 2016, the following order was passed by this Court:

> "Admit.
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> The following question of law arises for consideration:
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> *"Did the CESTAT fell into error in rejecting the appellant's contention that in the circumstances of the case the revocation was not sustainable in law for exceeding the time limit stipulated for commencement of proceedings?"*
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> Issue notice of appeal. Mr. Abhishek Ghai, Advocate accepts notice on behalf of the respondent.
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> List on 08.11.2016 for final hearing."

17. The main plank of the submission of the learned counsel for the Appellant is that the CESTAT erred in observing that in view of the order dated 25th February 2015 of this Court, the time limit under Regulation 22 of the CHALR for issuance of an SCN, completing the enquiry and passing the order of revocation stood extended. It is submitted that the time limit of 90 days under Regulation 22 (1) of the CHALR is sacrosanct and cannot be extended even by this Court. Further, it was submitted that at the stage when the order was passed by this Court on 25th February 2015, the issue was one of the suspension of the Appellant's license and not its revocation.

18. The Court is unable to agree with the above submission of the learned counsel for the Appellant. The detailed narration of the facts earlier makes it clear that by the time the matter reached this Court at the instance of the Appellant by way of Customs Appeal No.7/2015, the suspension of the

Appellant's license already stood confirmed by an order passed by the Respondent on 8th October, 2014. In fact, it was that order which was taken up in appeal before the CESTAT along with an application for stay. The CESTAT rejected the stay application on 19th January, 2015 and thereafter Customs Appeal No.7/2015 was filed before this Court.

19. The question of the Court granting further time to the Respondent to again pass another order confirming the suspension of the Appellant's license, therefore, did not arise. In its order dated 25th February 2015, the Court did not set aside the order dated 19th January, 2015 passed by CESTAT rejecting the stay application of the Appellant. In effect, the Court permitted the orders suspending the Appellant's license to continue to operate as such. It is in this context that the direction issued in para-2 of the order dated 25th February 2015 requires to be examined.

20. Regulation 22(1) of the CHALR reads as under:-

> "22. Procedure for suspending or revoking licence under Regulation 20.
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> (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 defence 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."

21. It is, therefore, clear that Regulation 20 provides for suspension or revocation of license and Regulation 22 deals with the procedure therefor. At the time when the Court passed its order dated 25th February, 2015 an SCN had already been issued for the revocation of the Appellant's license. Therefore, this fact was present in the minds of both the counsel for the Appellant as well as the Respondent and naturally of the Court as well. The only thing that remained to be done was to complete the enquiry pursuant to such SCN. The direction issued obviously related to the enquiry that was required to be undertaken for revocation of the Appellant's license. It is for that purpose that the Court then granted more time. When it used the words 'final orders', it obviously meant the final revocation order. There can be no manner of doubt, therefore, that in para-2 of the order dated 25th February, 2015, the Court contemplated completion of the enquiry proceedings pursuant to the SCN issued for revocation of the Appellant's license and nothing else.

22. If the Appellant was aggrieved by the order of this Court granting extension of time for completion of the enquiry and passing of the revocation order, the Appellant could have further challenged the said order. That, however, was not done by the Appellant. In these circumstances, the CESTAT was right in holding that the Appellant could not thereafter contend that the time limits under Regulation 22 of the CHALR having been

breached. The Appellant accepted the orders of this Court extending those time limits.

23. In the circumstances, no fault can be found in the impugned order of the CESTAT.

24. The learned counsel for the Appellant then sought to urge that this Court should examine the merits of the order of revocation of the Appellant's license and whether it was disproportionate and harsh. The Court finds that the scope of the present appeal stands restricted by the sole question of law framed when the appeal was admitted by this Court on 2nd September, 2016. Consequently, no further question arises. The Court is also not inclined at this stage to frame any further question in the appeal.

25. The question framed is accordingly answered in the negative, that is, against the Appellant and in favour of Respondent by holding that the CESTAT did not err in rejecting the Appellant's contention that in the circumstances of the case the revocation was not sustainable in law by extending the time limit as prescribed under the Regulation. The appeal is accordingly dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 24, 2017/*'anb'*