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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **CUSAA 44/2017 & CM 25003/2017 (stay)**

COMMISSIONER OF CUSTOMS (GENERAL) NEW DELHI
..... Appellant
Through: Mr Harpreet Singh, Senior Standing Counsel

versus

RUAN SHIPPING ..... Respondent
Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>
% **18.07.2017**

1. This is an appeal by the Department against the order dated 17th November, 2016 passed by the Customs, Excise & Service Tax Appellate Tribunal, allowing the appeal of the Respondent against an order dated 3rd June, 2016 passed by the Commissioner of Customs (General), New Delhi cancelling the Respondent's Customs Broker License issued under the Customs Brokers Licensing Regulations ('CBLR').

2. The question of law that is sought to be urged is whether when the Commissioner disagrees with the enquiry report which is in favour of the broker, does the time limit of 90 days from the date of such report for passing a final order under the Regulation 20(7) CBLR, apply?

3. The contention urged before this Court by Mr Harpreet Singh, learned Senior Standing Counsel appearing for the Department, is that the CBLR does not envisage a situation where an enquiry report might be in favour of the broker. According to him, it is impractical to expect the Commissioner of Customs to prepare his dissent note and also provide a copy thereof to the broker, conclude the proceedings and pass an order within the 90 days period which, according to him is, in any event, not expressly provided for in the CBLR. Mr Harpreet Singh submits that the Department is otherwise complying with the directions issued by this Court in its decision in ***Him Logistics Pvt. Ltd. v. Commissioner of Customs (General) 2016 (334) ELT 262***, and has been furnishing copies of the enquiry report to the broker. He submitted that the said decision should not imply the requirement of compliance with the time limit under Regulation 20 (7) of the CBLR.

4. The Court is unable to agree with the above submissions. Regulation 20 (7) of CBLR reads as under:

> "(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):
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> Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs."

5. Regulation 20 (7) of the CBLR does not make any distinction between an

enquiry report in favour of a broker and that which is against him. In either event, a copy of the report is to be made available to him. If it is adverse to the broker, he can make a representation. In either event, the order passed in ***Him Logistics Pvt. Ltd.*** (*supra*) would have to be followed.

6. In the present case, the impugned order is against the broker. If the report also had been against the broker, then such consequential order cancelling the license would again have to be passed under Regulation 20(7). In the present case, disagreeing with the report, the Commissioner has proceeded to pass an order cancelling the license of the broker. In such event, therefore, the Commissioner should have adhered to the 90 day limit as specified in Regulation 20 (7) of the CBLR. Consequently, the submission that the CBLR does not envisage such limit and, therefore, the time period under Regulation 20(7) would not apply where the Commissioner disagrees with the enquiry report, is unacceptable.

7. No substantial question of law arose for consideration in the impugned order. The appeal is accordingly dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 18, 2017
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