IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4824 of 2018

M/s. Kalki Shipping Associates,
Old No.15, New No.31,2nd Floor,
Room No.B, New Steet, Mannady,
Chennai - 600 001.
Rep. by its Proprietor A.Chandra Kumar ... Petitioner

vs.

The Commissioner of Customs,
Chennai VIII Commissionerate
No.60, Rajaji Salai, Custom House,
Chennai- 600 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order in original No.59024/2017 dated 13.10.2017 passed by the repsondent herein and to quash the same, in so far as the said order of revocation of license in terms of Regulation 20(7) of CBLR, 2013 and the forfeiture of security deposit of rs.25,000/- and the imposition of penalty of Rs.50,000/- in terms of Regulation 18 of CBLR, 2013 is without jurisdiction and authority of law and in excess of the powers conferred with the respondent.

For Petitioner : Mr.N.Viswanathan
For Respondent : Mrs.Aparna Nandakumar,
Standing counsel.

O R D E R

The petitioner is aggrieved against the Order-in-Original dated 13.10.2017 in revoking the Customs Broker License given to the petitioner, imposing penalty and forfeiting security deposit.

2. Though an appeal remedy is available against the impugned order before the Tribunal, it is contended by the petitioner that this writ petition is maintainable since

the impugned proceedings was issued beyond the period of limitation stipulated under the Customs Brokers License Regulation, 2013, both at the stage of issuing show cause notice as well as while passing the impugned order on receipt of the enquiry report. Therefore, it is contended that the impugned order passed beyond the period of limitation cannot be sustained for want of jurisdiction.

3. Mr.M.Viswanathan, learned counsel for the petitioner submitted that the petitioner's license was originally suspended on 10.11.2016 and the said suspension order was subsequently revoked on 06.01.2017. The offence report was made on 27.09.2016. However, the show cause notice was issued only on 02.03.2017 which is beyond 90 days from the date of receiving the offence report, as required under Regulation 20(1) of the Customs Broker License Regulation, 2013. An enquiry was conducted and thereafter, the Enquiry Officer made the report and submitted the same to the adjudicating authority on 17.05.2017. However, the impugned order was passed after a period of 90 days in clear violation of Regulation 20(7). Therefore, the learned counsel for the petitioner contended that when the mandatory requirement of complying the period of limitation is violated in this case on both occasions as stated supra, the impugned order is liable to be set aside, without going into the merits of the matter. In support of his contention, learned counsel relied on an order passed by this Court in W.P.Nos.26923& 26924 of 2018 dated 22.11.2018.

4. A counter affidavit is filed by the respondent wherein the facts and circumstances warranting the revocation of license have been stated elaborately. However, insofar as the dates and events as projected by the petitioner are concerned, there is no dispute about the same, since the impugned order itself refers to the date and events as stated by the petitioner, touching upon the issue on limitation.

5. The learned counsel for the respondent submitted that the impugned order need not be interfered with only on the ground of limitation since the allegation made against the petitioner has been considered in detail for revocation of the license and therefore, the petitioner can be directed to file an appeal against the impugned order.

6. Heard both sides.

7. There is no dispute to the fact that the offence report was made ready on 27.09.2016 and communicated to the respondent. However, the show cause notice was issued only

on 02.03.2017. At this juncture, Regulation 20(1) of the said regulation is relevant to be quoted as follows:

> "20. Procedure for revoking licence or imposing penalty.
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker 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 Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs." ....

Thus, it is seen from the above regulation that the Commissioner of Customs shall have to issue a notice to the Customs Broker within a period of 90 days from the date of receipt of the offence report. In this case, the show cause notice was issued only on 02.03.2017, based on the offence report dated 27.09.2016 received at the office of the respondent. Though the show cause notice does not say as to when such offence report was received by the respondent and the very notice itself was issued only on 02.03.2017, the date of issuance of such notice has to be construed as the date of receipt of offence report, as has been held by this Court in a decision reported in 2014(309) ELT 433 (A.M.Ahamed & Co. vs. Commissioner of Customs (Imports),Chennai) wherein paragraph No.18, reads as follows:

> "18. The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions, (ii) failure to comply with the regulations and (iii) a misconduct, for any of which, the licence can be revoked. Since the above regulation does not use the expression "offence report", we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an offence report. Consequently, the date of knowledge gained by the Commissioner, by means of any communication, be it

> show cause notice or order-in-original, has to be construed as the date of receipt of the offence report. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years.”
>
> (emphasis supplied)

8. Going by the date of receipt of the offence report and the date of issuance of the show cause notice, it is evident that the show cause notice issued was beyond the period of 90 days and thus, the same is in violation of Regulation 20(1) of the Customs Broker License Regulation, 2013.

9. The next contention raised by the petitioner is in respect of the limitation prescribed under Regulation 20(7) contemplating that the Commissioner should pass an order within 90 days from the date of submission of the report by the Enquiry Officer. Regulation 20(7) reads as follows:

> “20. Procedure for revoking licence or imposing penalty.
>
> (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).

10. In this case, it is admitted in the impugned order itself that the report of the Enquiry Officer was submitted before the respondent on 17.05.2017. However, the impugned order was passed admittedly, on 13.10.2017, which is clearly beyond 90 days, as required under Regulation 20(7). Whether the period of limitation prescribed under the Regulations is directory or mandatory has already been considered by this Court in its recent decision made in W.P.No.26923 & 26924 of 2018 dated 22.11.2018 wherein this Court after relying on the Division Bench decision has observed as follows:

> 8. Perusal of the above Regulation clearly indicates that such report on conclusion of the

inquiry shall be prepared and submitted within a period of 90 days from the date of issue of notice under Sub Regulation (1). It is contended by the respondents that the time stipulated under Regulation 20(5) for filing such report is only directory and not mandatory. The very same issue was considered by the Division Bench of the Delhi High Court in a case reported in 2016 (338) ELT 347 (Del), Impexnet Logistic vs Commissioner of Customs (General). The Delhi High Court at paragraph Nos. 6 to 10 has observed as follows:

> "6. From the list of dates submitted by the Respondent, it appears that an enquiry report dated 4th March, 2015 was forwarded by the Inquiry Officer only on 10th March 2015 which was 13 months after the suspension of the licence. It is thereafter that the impugned order dated 1st June, 2015 was passed after affording the petitioner an opportunity of being heard.
>
> 7. It is plain that in the case there has been a violation of the time-limits set out in Regulation 20 of the CBLR (corresponding to Regulation 22 of the CHALR) in the decision dated 12th May, 2016 in Cus. AA 25/2015 (Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General) [2016 (337) E.L.T. 41(Del)] this Court held:
>
> "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 (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.)."

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."

9. The other decision relied on by the petitioner is the decision made in CMA No.732 of 2016 dated 13.10.2017 by the Division Bench of this Court. In the said decision, the Division Bench, after following the Delhi High Court decision reported in 2016 (337) ELT 41 (Del), Indair Carrier Pvt. Ltd vs Commissioner of Customs (General), has observed at paragraph No.42 as follows:

"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."

10. Perusal of the above said decisions of this Court and the Delhi High Court would show that the time stipulated under the Regulations for issuing the show cause notice as well as the filing report is not directory and on the other hand, it is mandatory. No other contra decisions are placed before this Court by the learned counsel for the respondents. Even the decision, which he sought to rely made in W.P.Nos.19312 and 19313 of 2016 dated 13.07.2016, is not relevant to the present facts and circumstances, since in that case this Court has considered the question as to whether the respondent therein had sufficient power to sustain the license invoking Regulation 19(1) of the Regulations. In this case, the petitioner has raised the issue on the time limit fixed under Regulation 20(5) and not 19(1). When the facts placed before this Court are very clear that the report itself was prepared and filed beyond 90 days as statutorily required and when the decision of this Court and the Delhi High Court clearly indicate that such time limit fixed is mandatory, this Court is of the view that the report so filed beyond the period of 90 days cannot be considered as a valid report and consequently further proceedings cannot be

allowed to go as a follow up action.

11. Considering the above stated facts and circumstances, this Court is of the view that issuing the show cause notice beyond the period of 90 days is in violation of Regulation 20(1) and passing the impugned order after 90 days from the date of receipt of report is in violation of Regulation 20(7). Therefore, this Court is fully convinced that the impugned order cannot be sustained for want of jurisdiction on the very reason that the same was passed beyond the period of limitation.

12. Accordingly, this writ petition is allowed and the impugned order is set aside. However, this will not preclude the respondent from initiating any other proceedings against the petitioner in accordance with law if they have any valid reason to do so. No costs.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

vsi
To

The Commissioner of Customs,
Chennai VIII Commissionerate
No.60, Rajaji Salai, Custom House,
Chennai- 600 001.

+1cc to Mr.N.Viswanathan , Advocate SR.No. 88903
+1cc to Mrs.Aparna Nandakumar , Advocate SR.No. 88266

W.P.No.4824 of 2018

ASK(20/12/2018)