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

% *Date of Judgment: 9th January, 2018*

\+ **W.P.(C) 6908/2017**

SH. HARJEET SINGH JOHAR ..... Petitioner

Through Mr. Pankaj Bhatia, Mr. Nipun Goel, Mr. Dhruv Surana and Mr. Ashish Chaudhary, Advs.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL) & ORS. ..... Respondents

Through Mr. Abhishek Ghai, Adv. for Mr. Sanjeev Narula, SSC for Customs

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. *(ORAL)*

1. As a short issue arises in the present petition, we have, with consent of counsel, taken up the writ petition for final hearing and heard arguments.

2. The petitioner has impugned show cause notice dated 14.07.2017 issued by the Principal Commissioner under Regulation 20 of the Customs Broker & Licensing Regulations, 2013 ('2013 Regulations', for short), inter alia, on the ground that it has been issued after expiry of limitation period of 90 days from the date of receipt of the offence report. Hence, it is bad in law, illegal and should be quashed.

3. The petitioner has also challenged legality and correctness of order dated 12.06.2017 passed by the Commissioner confirming the order of the suspension of licence in terms of Regulation 19 (2) of the 2013 Regulations.

4. In order to appreciate controversy, we would like to reproduce Regulations 20 and 22 of the 2013 Regulations which read as under:-

*"**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 license 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.

(2) The Commissioner of Customs may. on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a

period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(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 license 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) :

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.

X X X

22. Penalty.-

A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations shall be liable to a penalty which may extend to fifty thousand rupees."

5. The Delhi High Court in ***Overseas Air Cargo Service v. Commissioner of Customs,*** 2016 (340) ELT 119 (Del.), ***Indair Carrier Pvt. Ltd. v. Commissioner of the Custom (General)*** 2016 (337) ELT 41 (Del.) and ***Commissioner of Customs v. S. K. Logistics*** 2016 (337) ELT 39 (Del.), has held that the time period of 90 days mentioned in Regulation 20(1) of the 2013 Regulations is mandatory and sacrosanct. A show cause

notice issued after 90 days of receipt of the offence report, is invalid. In other words, if the show cause notice was not issued within a period of 90 days from the date of receipt of the offence report, the proceedings under Regulation 20 would be null and void. We are bound by these decisions passed by co-ordinate Division Benches of this Court.

6. It is an accepted and admitted position that the petitioner's license as a custom broker was suspended under Regulation 19 of the 2013 Regulations on 31.03.2017. Earlier, an order of prohibition was passed on 15.03.2017. The petitioner had challenged these orders in W.P.(C) No. 3265/2017, which was disposed of vide order dated 22.05.2017 recording that no notice was issued prior to the passing of the prohibition order dated 15.03.2017 and the suspension order dated 31.03.2017. Prohibition order was quashed and with regard to the suspension of license, it was observed that hearing would be given to the petitioner by the Commissioner (Meerut) on 05.06.2017 at 11:00 a.m. on which date the petitioner would also tender his reply. Within two weeks thereafter, a final order with regard to the suspension would be passed by the Commissioner.

7. Pursuant to the aforesaid direction, the Commissioner (Meerut) passed order dated 12.06.2017, confirming suspension, which as noticed above is the second order under challenge in the present writ petition.

8. The core issue which arises in the present writ petition is regarding the term and expression "offence report" as used in Regulation 20(1) of 2013 Regulations. As per the petitioner, "offence report" would be the first information received by the authority regarding irregularity and misconduct. This is the starting point for issue of show cause notice. Reliance is placed on two judgments of Single Judges of the Madras High Court in ***M/s A. M. Ahamed & Co. vs. The Commissioner of Customs***

(Imports) 2014 (309) ELT 433 (Mad.) and ***Patriot Freight Logistics System vs. The Commissioner of Custom, Chennai*, **2017 (350) ELT 59 (Mad.) The Petitioner has also relied upon the assertions made by the respondents in the counter affidavit filed in W.P. (C) No. 3265/2017.

9. Learned counsel for the respondents on the other hand submits that the show cause notice for violation of provisions of Customs Act was issued on 30.05.2017. This show cause notice should be treated as the offence report, and therefore notice issued under Regulation 20(1) dated 14.07.2017 is within time.

10. Decision in ***M/s A. M. Ahamed (supra),*** relates to Regulation 20 of the Customs House Agent License Regulations 2004 ('2004 Regulations', for short) which were applicable prior to enactment and enforcement of 2013 Regulations. The expression 'offence report' was also used in the 2004 Regulations. Interpreting the said expression, it was observed in ***M/s A. M. Ahamed (supra)*** as under:-

> *"17. Unfortunately, the Regulations do not define what an offence report is and the Regulations do not even state as to how an offence report is to be sent. The Regulations do not even use the expression "offence report" anywhere else other than Regulation 22(1). Even the grounds on which a licence can be revoked or suspended, mentioned in Regulation 20(1), do not include the definition of the expression offence or offence report. There are only three grounds on which a licence can be suspended or revoked under sub-regulation (1) of Regulation 20. Regulation 20(1) reads as follows:-*
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> ***20. Suspension or revocation of licence.***
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> *(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :*

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

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 license 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.

19. The Regulations not only fail to prescribe what an offence report is and how it is to be sent, but they do not also prescribe the person competent to send it. In such circumstances, the interpretation sought to be given by the petitioner is more acceptable.

20. The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit *and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 08.05.2010 with a copy marked to the first Respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days."*

11. 2013 Regulations have repealed 2004 Regulations. The authorities, while enacting 2013 Regulations, did not deem it appropriate to define the term "offence report" and had used the same term in Regulation 20 of the 2013 Regulations.

12. The aforesaid judgment and reasoning explaining the expression "offence report" was followed by another Single Judge of the Madras High Court in ***Patriot Freight Logistic System (supra).***

13. It may be also relevant to reproduce, the factual assertion made by the respondents in the counter affidavit filed to the W.P. (C) 3265/2017. In the said counter affidavit, the respondents had pleaded:-

"It is submitted that the Prohibition Order vide o-i-o no.13/SM/ Prohibition/2017 dated 15.03.2017 was issued on the basis of investigation report received from the Commissioner of Customs, ICD PPG, New Delhi vide letter C.No.VIII/6/ICD/PPG/SIIB/Pine Solution/72/2016/4374 dated 01.03.2017 wherein it was informed that the petitioner filed a Bill of Entry No. 7525937 dated 21.11.2016 for M/s Pine Solution, B-24, Jain Park, Uttam Nagar, New Delhi- 110059 under RMS and the same was cleared and allowed for out of charge (OOC). The said consignment was found mis-declared as the actual goods were "Measuring Tape" and in place of plain rubber sheet as declared. During the course of investigation, it was also gathered that the Bills of Entry of importers i.e. M/s Pine Solutions, M/s Shakti Traders and M/s N U Asia Overseas, were filed through the petitioner i.e. M/s Harjeet Singh Johar wherein the mis-declaration was detected, and the same were under investigation. On the basis

of details of .investigation it was observed that the petitioner was liable for breach of trust imposed on them under Regulation 10, l1(a), ll(e), 1l(n) and 17(9) of CBLR, 2013. Copy of the investigation report received from the Commissioner of Customs, ICD PPG, New Delhi vide letter C.No.VIII/6/ICD/PPG/SIIB/Pine Solution/72/2016/4374 dated 01.03.2017 is annexed herewith and marked as ***Annexure - I.*** *Further, Regulation No. 23 of CBLR, 2013 does not provide for grant of Personal Hearing or for issuance of show cause notice before an order of prohibition is passed."*

A reading of the said paragraphs would indicate that the prohibition order was issued on the basis of the investigation report received from the Commissioner of Customs, New Delhi. It was stated that two investigations were conducted in respect of bill entries filed through the petitioner in which mis-declaration was detected. It was observed that the petitioner was liable for breach of trust in terms of 2013 Regulations. A copy of the investigation report was enclosed. Thus, the reports received, had in fact, resulted in passing of the suspension order and the prohibition order.

14. Learned counsel for the petitioner has pointed out that the 2013 Regulations are under amendment. In the draft Regulations, the term "offence report" has been defined as:-

"*Explanation: Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder as the case may be under these regulations which would render him unfit to transact business under these regulations".*

The aforesaid definition in the draft regulation supports the view taken by the Madras High Court.

15. In view of the aforesaid position, we record that the suspension order dated 31.03.2017 was based upon the offence report, and therefore the show cause notice under Regulation 20, dated 14.07.2017, would be clearly barred by the limitation as it was issued more than 90 days after the offence report was submitted.

16. We accordingly allow the present writ petition and quash the show cause notice dated 14.07.2017 initiating proceedings under Regulation 20 of the 2013 Regulations, as it has been issued after 90 days from the date of receipt of offence report. The order confirming suspension dated 12.06.2017 would therefore become ineffective and infructuous.

17. However, we deem it appropriate and necessary to clarify that the show cause notice under Regulation 20 of the 2013 Regulations has been quashed on technical ground and not on merits. Therefore quashing of show cause notice would not have any effect and would not be relevant while examining and deciding violation of provisions of the Customs Act, for which separate show cause notice has been issued. In case of an adverse order, consequences which may require action under the 2013 Regulations would follow. These aspects would be examined independently, without being influenced by this order.

18. The writ petition is disposed of, in the above terms, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 09, 2018/b