

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 15.01.2018

+ **W.P.(C) 9083/2015**

M/S NECKO FREIGHT FORWARDERS LTD

..... Petitioner

Versus

COMMISSIONER OF CUSTOMS (GENERAL)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Manish Kaushik.

For the Respondent : Mr Amit Bansal and Mr Akhil Kulshrestha.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, assailing an order dated 18.03.2015 (hereafter 'the impugned order') passed by the Commissioner of Customs (hereafter 'the respondent') confirming the suspension of the petitioner's Custom House Agents License (hereafter the 'License') under Regulation 19(2) of the Customs Brokers Licensing Regulations, 2013 (hereafter 'the CBLR').

2. The petitioner claims that although its License has been suspended, the respondent has not initiated further proceedings for its revocation. Consequently, such proceedings are now barred. According to the petitioner, in terms of Regulation 20(1) of the CBLR, notice for cancellation/revocation of the License ought to have been issued within ninety days from the date of receipt of an offence report and since no such

notice had been issued, the order of suspension could not be permitted to be continued indefinitely.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 The petitioner is engaged in the profession of providing services of customs broker to importers/exporters vide License no. R-4/97 issued by the Customs Authority under Regulation 8(1) of the Customs House Agents Licensing Regulations, 1984 (hereafter 'CHALR'). The said License was issued to the petitioner on 06.01.1997 and was valid up to 31.12.2016.

3.2 It is stated that in the course of its business, the petitioner transacted customs business through ICD Tughlakabad for following two exporters:

- i. M/s Vee Dee Textile
- ii. M/s S.S. Exports

3.3 An inquiry was initiated by the officers of ICD, Tughlakabad against some exporters, which was then transferred for investigation to the Directorate of Revenue Intelligence (DRI). The DRI investigated some consignments of export covered under 260 shipping bills pertaining to 21 exporters for which Let Export Orders were issued. According to the investigation, it appeared that the goods had been over valued by more than fifteen times in order to avail Duty Drawback and benefits under the Focus Product Scheme (FPS).

3.4 The DRI authorities sent a letter dated 16.02.2015, *inter alia*, informing the respondent that certain exporters had attempted to export

Floor Coverings, classified under various headings under Chapter 57, by overvaluing the same in order to avail/claim export incentives such as Duty Drawback and benefits under the Focus Product Scheme, in excess of their entitlements.

3.5 The premises of certain exporters and Custom Brokers were also subjected to search operations and it was found that some of the addresses mentioned by the exporters in their IECs (Importer Exporter Code) were non-existent. It is alleged that IECs had been obtained by using the identity of persons, who were not the actual exporters but were being used as a front to perpetuate the fraud. The respondent was informed that the role of Custom Brokers had also been examined and it was, *inter alia*, found that the petitioner had also filed SBs for M/s Vee Dee Textiles and M/s S.S. Exports, which were suspected to be highly overvalued.

3.6 The office of the petitioner was searched by the officers of DRI on 21.01.2015, whereby records pertaining to the export of certain clients were seized.

3.7 Sh. Rajiv Sharma, Director of the petitioner was summoned vide Summons dated 13.02.2015, to appear before the Senior Intelligence Officer (hereafter 'SIO'), DRI on 16.02.2015. He appeared before the SIO in compliance with the aforesaid summons. He was again served with the summons on 16.02.2015 to appear before the SIO, DRI on 18.02.2015 and his request that the hearing be deferred to some other date as his mother was to be operated on 19.02.2015, was rejected.

3.8 On the basis of the information received, the respondent passed an order dated 25.02.2015 under Regulation 19(1) of the CBLR suspending

the petitioner's License as according to the respondent, it appeared that the petitioner had contravened various provisions of the CBLR including Regulations 11(a), 11(d), 11(i), 11(m) and 11(n) of the CBLR.

3.9 The petitioner submitted a written representation dated 07.03.2015 denying that it had contravened the provisions of the CBLR. The petitioner was granted a personal hearing on 09.03.2015. Thereafter, the respondent passed the impugned order confirming the suspension of the petitioner's License.

4. The petitioner has assailed the impugned order mainly on the ground that the impugned order has not been followed by any further proceedings for revocation of the petitioner's License. It is the petitioner's case that the order of suspension is an interim measure and is required to be followed by proceedings for revocation of the License in terms of Regulation 20 of the CBLR. Thus, the respondent is required to take final view whether to revoke the petitioner's License or to terminate the proceedings. It is stated that Regulation 20 of the CBLR provides for strict timelines within which the said proceedings for revocation of the License are to be completed. Since, in the present case, no such proceedings have been initiated, the impugned order cannot be permitted to continue indefinitely and is liable to be set aside.

5. Mr Kaushik, learned counsel for the petitioner relied on the decision of the Madras High Court in ***Commissioner of Customs (Sea Port Import), Chennai v. CESTAT, Chennai: 2014 (310) ELT 673*** in support of his contention that the order of suspension of license is required to be followed by proceedings for revocation of the License and if such proceedings are not completed within the specified time, the order of suspension of License

is liable to be revoked. He submitted that although the said decision was rendered in the context of Regulations 20 and 22 of the CHALR, the same would also be applicable in the case of suspension of License under the CBLR. He also relied on the decision of the Supreme Court in *UOI & Anr v. Kirloskar Pneumatic Company Ltd: 1996 (84) ELT 401 (SC)* and *Collector of Central Excise, Chandigarh v. M/s Doaba Co-operative Sugar Mills Ltd., Jalandhar: 1988 (37) ELT 478* in support of his contention that the respondent was bound by the timelines as specified under Regulation 20 of the CBLR.

6. Mr Bansal, the learned counsel appearing for the respondent countered the aforesaid submissions. According to the respondent, the matter is still under investigation by the DRI and neither any offence report has been received nor any show cause notice has been issued pursuant to the said investigations. He submitted that since the investigations are still underway, no offence report has been generated as yet. He submitted that since the respondent has not received an offence report as yet, the time period as prescribed under Regulation 20 of the CBLR has not yet commenced. He further submitted that the time limit specified under the Regulations can only be taken to be directory and not mandatory.

7. Before proceeding further, it would be necessary to refer to Regulation 19 and 20 of the CBLR, which are set out below:-

“19. Suspension of license:

- (1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker

where an enquiry against such agent is pending or contemplated.

- (2) Where a licence, is suspended under subregulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker.

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20.

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.

(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, to inquire into the grounds which are not admitted by the Customs Broker.

(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 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):

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.”

8. A plain reading of Regulation 19(1) of the CBLR indicates that the Commissioner of Customs may in appropriate cases where immediate

action is necessary, suspend the License of Customs Broker. It is apparent that such action can be taken only where: (i) immediate action is necessary; and (ii) an inquiry against the agent is pending or contemplated. Regulation 19(2) of the CBLR further specifies that where the License of Customs Broker is suspended under Regulation 19(1) of the CBLR, the Commissioner of Customs is required to afford an opportunity of being heard to the Customs Broker within a period of fifteen days thereof and is further required to pass an order either revoking the suspension or continuing it within fifteen days from the date of hearing. It is apparent from the plain reading of Regulation 19(1) and (2) of the CBLR that although the Commissioner of Customs has the power to immediately suspend the Licence of a Customs Broker without affording a hearing, he is nonetheless required to grant an *ex post facto* hearing and such proceedings are to be culminated within the period of thirty days; that is, fifteen days to provide a hearing to the Customs Broker and fifteen days thereafter to pass the order.

9. The question whether the time limits specified in Regulation 20 of the CBLR are mandatory is no longer *res integra*. This Court has in numerous decisions rendered in the context of CHALR, 2004 (which is now replaced by CBLR) held that the time limits prescribed under the Regulations are mandatory.

10. In ***Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General) & Ors: 2016 (337) ELT 41 (Del)*** the Division Bench of this Court had observed as under:-

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 (*M/s 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.)”

11. The CHALR, 2004 was replaced by CBLR and the decisions rendered in the context of CHALR, 2004 would be equally applicable in the context of CBLR.

12. The provisions of Regulation 19 of the CBLR are not standalone and are inextricably linked with the provisions of Regulation 20 of the CBLR. The proviso to Regulation 19(2) expressly provides that in the case where the Commissioner of Customs passes an order for continuing the suspension, the further procedure would be as provided under Regulation 20. This clearly indicates that immediately on confirmation of the suspension of License, the respondent was bound to proceed under Regulation 20 for either revoking the License or imposing a penalty. Thus, the proceedings once commenced must inevitably conclude with either revocation of a Customs License or the License issued to the Customs Broker and/or imposing a penalty, or the proceedings being dropped against the Customs Broker. Clearly, the order of suspension cannot be permitted to be continued indefinitely.

13. In *Commissioner of Customs (Sea Port, Import), Chennai v. CESTAT (supra)*, the Division Bench of the Madras High Court had also observed as under:-

“33. The compliance of procedure under Regulation 20 would not tantamount the compliance of Regulation under 22 and therefore, the substantial questions of law raised in these appeals are answered in negative against the appellant in these appeals. In the result, all these Civil Miscellaneous Appeals are dismissed, confirming the orders dated 10.10.2013 in Final Order No. 40461/2013 and the orders dated 12.11.2013 in Final Order No. 40566 to 40569 of 2013 respectively on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.”

14. The order of suspension by its very nature is an interim order. There is no dispute that such order cannot be continued indefinitely; however, it is the case of the respondent that after the License is suspended, the respondent is necessarily to await conclusion of the investigations and a final Show Cause Notice in order to proceed further under Regulation 20 of CBLR. It is further contended by the respondent that it had not received the offence report as yet and, therefore, the timelines under Regulation 20 have not commenced. This Court does not find the aforesaid contention to be persuasive.

15. The expression ‘offence report’ has not been defined. However, it is apparent that the same must mean a report indicating that an offence has been committed by the Customs Broker. This is also how the said term has been understood by the authorities. The expression ‘offence report’ was

also used in Regulation 22(1) of CHALR, 2004. In terms of the said Sub-regulation, the Commissioner of Customs was required to issue a notice within 90 days of the receipt of an offence report, indicating the grounds on which the License of a Customs House Agent was proposed to be revoked/suspended. The Central Board of Excise and Customs had issued a circular (circular no.9/2010-Customs dated 08.04.2010) in regard to certain issues that had arisen with regard to the implementation of CHALR, 2004. Paragraph 7.2 of the said circular is relevant and is quoted below:-

“ 7.2 In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a ‘post-decisional hearing’ should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him.”

16. A plain reading of the aforesaid passage indicates that the expression 'offence report' as used in Regulation 20(2) of CHALR, 2004 was understood as a report regarding detection of an offence.

17. In the present case, the respondent had received a letter dated 16.02.2015 from ADG(HQ), DRI, New Delhi indicating that an investigation had been undertaken with regard to certain exporters, which had indicated that the goods exported had been overvalued by more than fifteen times in order to claim Duty Drawback and Focus Product Scheme Benefits. The premises of various exports and Customs Brokers (had also been including that of the petitioner) were also searched. The statement of Shri Rajiv Sharma, Director of the petitioner had also been recorded under Section 108 of the Customs Act, 1962. The said facts have been noticed in the order dated 25.02.2015 passed by the respondent. The said facts are also stated in the impugned order. It is thus apparent from the above, that information as to the offence allegedly committed by the petitioner had been forwarded to the respondent. The said letter indicating the detection of an offence must necessarily be considered as an offence report since that has triggered the action against the petitioner. The contention that the offence report mentioned in Regulation 20 of CHALR, 2004 is synonymous to the Show Cause Notice, which would be issued by the Custom Authorities is difficult to accept. The expression 'offence report' must be considered in the context in which the expression is used and as per its plain meaning; that is, a report indicating detection of an offence. Thus, the respondent was required to issue a notice under Section 20(1) of CBLR within a period of ninety days from the receipt of such report; that is, within the period of ninety days from the receipt of letter dated

16.02.2015. Concededly, no notice under Regulation 20(1) of the CBLR has been issued as yet.

18. A conjoint reading of Regulation 19 & 20(1) indicates that the Commissioner of Customs may in appropriate cases suspend the License without hearing but must provide a hearing within a period of fifteen days and pass the order confirming the suspension within a period of fifteen days thereafter. Assuming that the Commissioner has passed an order suspending the license immediately on receipt of offence report, he would provide a further period of sixty days to issue a notice to the Customs Broker indicating the grounds on which it is proposed to revoke the License or impose a penalty. This is so because in terms of Regulation 20(1) of the CBLR, such notice is required to be issued within a period of 90 days from the receipt of offence report. The order suspending the License of a Custom Broker cannot continue indefinitely and must yield to the procedure under Regulation 20 of CBLR.

19. The Custom Broker is required to respond to the notice under Regulation 20(1) of the CBLR within a period of thirty days. The Commissioner of Customs is, thereafter required – in terms of Regulation 20(2) of CBLR – to direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire into the grounds, which are not admitted by the Customs Broker and to submit a report. The Deputy Commissioner of Customs/Assistant Commissioner of Customs is further required to submit the report within a period of ninety days from the date of issue of the notice under Regulation 20(1) of the CBLR.

20. In terms of Regulation 20(6) of the CBLR, the report of the Deputy Commissioner of Customs/Assistant Commissioner of Customs is required

to be furnished to the Customs Broker requiring him to make a representation within a period of thirty days, thereafter.

21. In terms of Regulation 20(7), the Commissioner of Customs is required to pass a final order within the period of ninety days of the receipt of the report of the Deputy Commissioner of Customs/Assistant Commissioner of Customs under Regulation 20(5) of CBLR. Thus, within a period of 270 (two hundred and seventy) days from the receipt of the offence report, the Commissioner of Customs has to pass an order either revoking the order of suspension or to revoke the License of the Customs Broker and/or impose a penalty as specified under Regulation 20(2) of the CBLR.

22. A Custom Broker cannot carry on its business without a License and, therefore, revocation or suspension of such License has serious adverse consequences as it results in preventing the Customs Broker from carrying on its vocation. Given the serious nature of such action, strict timelines have been specified under Regulations 19 and 20 of the CBLR and the same must be adhered to.

23. The respondent's contention that a License of a Custom Broker can be suspended indefinitely awaiting a final conclusion of the investigations and the period of suspension would be contingent on as and when the final show cause notice is issued and militates against the scheme of Regulations 19 and 20 of the CBLR. The rationale of providing strict timelines is to ensure that the work of the Customs Broker is not suspended indefinitely and any action against him is concluded in the time bound manner. The interpretation that the License of a Custom Broker can be suspended without immediately following the same proceedings under Regulation

20(1) of the CBLR would defeat the very objective for which such strict timelines have been provided.

24. In view of the above, the petition is allowed and the impugned order is terminated. The parties are left to bear their own costs.

JANUARY 15, 2018
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VIBHU BAKHRU, J

