

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2019

DATE OF DECISION : 28.06.2019

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.15544 OF 2019
and
W.M.P.No.15445 of 2019

M/s.Shriwin Shipping & Logistics,
Door No.76/80, Moore Street,
Chennai-600 001.
rep by its Partner Mr.G.Nathavel ..Petitioner

Vs.

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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to order in original No.69097/2019 dated 23.05.2019 passed by the respondent herein and to quash the same insofar as the said order for revocation of the license No.R-220/2012-CHA (PAN No.ACDFS7892RCH001) of the petitioner partnership firm, M/s.Shriwin Shipping & Logistics in terms of Regulation 17(7) of Customs Broker Licensing Regulations, 2018 (read with Regulation 20(7) of CBLR, 2013) and the further forfeiture of security deposit of Rs.25,000/- under Regulation 14 of CBLR, 2018 and the imposition of penalty of Rs.50,000/- under Regulation 18 of CBLR 2018 on the petitioner partnership firm M/s.Shriwin Shipping & Logistics is without jurisdiction and without following the due procedures of law and in excess of the powers conferred with the respondent and in gross violation to the principles of natural justice and the fundamental rights guaranteed to the petitioner under the Constitution and thus render justice.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr.Pramod Kumar Chopda
Senior Standing counsel for CBIC

ORDER

Mr.S.Baskaran, learned counsel on record for sole writ petitioner was before this Court and Mr.Pramod Kumar Chopda, learned Senior Standing Counsel, accepted notice on behalf of sole respondent.

2 This writ petition was listed under the caption 'FOR ADMISSION' in the motion list on 10.06.2019, but with the consent of learned counsel on both sides, the writ petition itself was taken up and heard out.

3 Short facts shorn of not so relevant details or in other words, factual matrix in a nutshell imperative for appreciating this order are as follows:

(a) Writ petitioner has 'Customs Brokers License' ('CBL' for brevity).

(b) Inter alia alleging that writ petitioner has failed to fulfill their responsibility as per Regulations 10(d), 10(e) and 10(n) of 'Customs Brokers Licensing Regulations, 2018' ('CBLR 2018' for brevity) and has failed to fulfill requirements under Regulations 11(d), 11(e) and 11(n) of 'Customs Brokers Licensing Regulations, 2013' ('CBLR 2013' for brevity), respondent issued a 'Show Cause Notice' ('SCN' for brevity) dated 14.09.2018. Aforesaid SCN issued by the respondent to writ petitioner says that it has been issued under Regulation 17(1) of CBLR 2018 read with Regulation 20(1) of CBLR 2013.

(c) In the aforesaid SCN, writ petitioner noticee was inter-alia called upon to show cause as to why the CBL should not be revoked and why security deposited by writ petitioner noticee should not be ordered to be forfeited and as to why penalty should not be imposed under Regulation 18 of CBLR 2018 read with Regulation 22 of CBLR 2013. Vide SCN, writ petitioner was also directed to appear for personal hearing and produce proof / evidence in support of their stand.

(d) In response to SCN, writ petitioner noticee sent its reply styled 'Statement of Defence' dated 22.11.2018. On receipt of reply to SCN from the writ petitioner, respondent directed the Assistant Commissioner of Customs to enquire into the same. Assistant Commissioner of Customs embarked upon the said exercise, i.e., enquiry and after conclusion of the enquiry, prepared a report of enquiry after recording his findings and submitted a report dated 21.02.2019.

(e) Thereafter, an order dated 23.05.2019 came to be passed by the respondent inter-alia revoking the CBL of the writ petitioner and ordering forfeiture of Rs.25000/- security deposit under Regulation 14 of CBLR 2018 and imposing penalty of Rs.50000/- on the writ petitioner under Regulation 18 of CBLR 2018. This order dated 23.05.2019 has been assailed in the instant writ petition and therefore, this order shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

4 The pivotal and sole ground on which the impugned order is assailed in the instant writ petition is violation of sub Regulation (5) of Regulation 17 of CBLR 2018. In other words, it is the specific and pointed case of the writ petitioner that the Assistant Commissioner of Customs has not filed the enquiry report within 90 days from the date of issue of SCN.

5 Before this Court proceeds further, it is to be noted that though SCN says that it has been issued under two provisions, i.e., one under CBLR 2013 and the other under CBLR 2018, writ petitioner submitted that the case would actually fall under CBLR 2018. Be that as it may, it does not make much difference, as the reference in the SCN as mentioned supra is to Regulation 17 of CBLR 2018 read with Regulation 20 of CBLR 2013. Writ petitioner submitted that Regulations 17 and 20 of CBLR 2018 and CBLR 2013 respectively are ad verbatim same. This submission was made at the Bar at the time of hearing. However, after orders were reserved, this Court closely examined both the Regulations, namely Regulation 20 of CBLR 2013 and Regulation 17 of CBLR 2018. This court finds that they are not ad verbatim same in every sense of the term. The reason is, while there are only 7 sub regulations in Regulation 20 of CBLR 2013, there are 9 sub regulations in Regulation 17 of CBLR 2018. However, this Court finds that sub regulations (1), (2), (3) and (5) of Regulations 20 and 17 of CBLR 2013 and CBLR 2018 are ad verbatim same in every sense of the term. However, as the entire gamut of this lis turns on sub regulations (1) and (5) (which are ad verbatim same) of Regulations 20 and 17 of CBLR 2013 and CBLR 2018 respectively, this Court decided to proceed with the exercise of dealing with this matter on merits, without further discussion on this aspect of the matter.

6 Further more, aforementioned facts set out supra are, as already mentioned, short facts which are imperative for appreciating this order. Necessary facts have been set out in the light of the trajectory of the hearing wherein it was made clear that the sole and pivotal ground on which the impugned order is assailed is violation of sub-regulation (5) of

Regulation 17 of CBLR 2018. In other words, facts set out supra are those which pertain to the aforesaid sole and pivotal ground and other facts touching upon other aspects of the matter have not been set out in great detail, particularly to avoid burdening this order with facts which are not imperative for appreciating this order, besides avoiding prolixity and preventing this order becoming verbose.

7 In the light of the sole and pivotal submission which falls for consideration, this court considers it appropriate to extract entire Regulation 17 of CBLR 2018 which reads as follows:

"17. Procedure for revoking license or imposing penalty.- (1)The Principal Commissioner or 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 permission 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 Principal Commissioner or 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 Principal Commissioner or 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 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 Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(8) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in

regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

Provided that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(9) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder:

Provided that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.

Provided further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

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 thereunder which would render him unfit to transact business under these regulations. "

8 As already alluded to supra, there is no dispute that sub-regulation (5) of Regulation 20 of CBLR 2013 is ad verbatim same to sub-regulation (5) of Regulation 17 of CBLR

2018 or in other words, the two sub-regulations are ad verbatim the same.

9 Adverting to sub Regulation (5) of Regulation 17 of CBLR 2018, learned counsel for writ petitioner submitted that the enquiry report of the Assistant Commissioner of Customs ought to have been submitted within a period of 90 days from the date of issuance of SCN, i.e., 14.09.2018. As the enquiry report has been submitted only on 21.02.2019, there is a clear violation of Regulation 17(5) of CBLR 2018 and therefore, the impugned order is liable to be quashed, is learned counsel's say.

10 In support of the aforesaid contention, learned counsel pressed into service an order made by a Hon'ble Single Judge of this Court dated 22.11.2018 made in W.P.Nos.26923 and 26934 of 2018. A perusal of the order of learned Single Judge reveals that the learned Single Judge, drawing inspiration from a Division Bench judgment of Delhi High Court reported in 2016 (338) ELT 347 (Del) being Impexnet Logistic Vs. Commissioner of Customs (General) as well as another Division Bench decision of this Court made in C.M.A.No.730 of 2016 dated 13.10.2017, had held that various time frames adumbrated in Regulation 20 of CBLR 2013 (Regulation 17 of CBLR 2018 in the instant case) are mandatory and not directory. Therefore, the principle that various sub regulations of Regulation 17 of CBLR 2018 are mandatory and not directory is learned counsel's say.

11 Learned Revenue counsel emphatically submitted that there is well settled litmus test for testing whether a particular rule / regulation is mandatory or directory. It is the further submission of learned Revenue Counsel that Hon'ble Supreme Court has answered this question as to what would be the litmus test. Hon'ble Supreme Court has answered this question elucidatively with specificity. The leading judgment of Hon'ble Supreme Court in this regard is Salem Advocate Bar Association case being Salem Advocate Bar Association Vs. Union of India reported in (2005) 6 SCC 344. In this judgment, Hon'ble Supreme Court has held that the test is to examine whether consequence of non adherence to a rule / regulation is prescribed or not? If consequence is prescribed, it is mandatory and if consequence is not prescribed, it is directory is the principle / litmus test laid down by Hon'ble Supreme Court. This aspect of the matter has been lucidly laid down and articulated by Hon'ble Supreme Court in Salem Advocate Bar Association case, is also learned Revenue counsel's say. In this regard, attention of this Court is drawn to paragraph 16 of Salem Advocate Bar Association case and the same reads as follows :

"16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view. "

12 To be noted, Salem Advocate Bar Association case has been rendered by a Three Judges Bench. Salem Advocate Bar Association principle has been reiterated by Hon'ble Supreme Court in a recent judgment rendered in SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. on 12.02.2019. Bihar Rajya Bhumi Vikas Bank Samiti case [State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472] is another recent judgment of Hon'ble Supreme Court rendered on 30.07.2018, where sub-section (5) of section 34 of the Arbitration and Conciliation Act, 1996 was held to be directory by applying this principle.

13 From a reading of the judgments of Delhi High Court as well as the order made by Hon'ble Single Judge of this Court, it comes to light that Salem Advocate Bar Association case principle as reiterated by Hon'ble Supreme Court in recent judgments alluded to supra has not been projected before the said Hon'ble Courts. Therefore, Salem Advocate Bar Association principle reiterated by Hon'ble Supreme Court recently in SCG Contracts India Pvt. Ltd. case Ltd. on 12.02.2019 being the law of the land, if applied to test whether time frames adumbrated in Regulations 20 and 17 of CBLR 13 and CBLR 2018 respectively are mandatory, it may become necessary to reconsider the position is learned Revenue counsel's say. The reason is, it is nobody's case that consequences have been provided qua aforesaid sub regulations and the object sought to be achieved by CBLRs is to prescribe an overall time frame from the date of receipt of offence report by prescribing time limits at various stages of SCN. This Court has given its careful and detailed consideration to this stand of Revenue, however as this case can be decided without embarking upon this debate, i.e., even by testing writ petitioner's case on the basis that sub regulations are mandatory, this Court deems it appropriate to leave this question open inter-alia for deliberations and for seeking a

reference if it becomes necessary in an appropriate case. With this caveat, this court proceeds to test this case on the basis that sub regulations are mandatory as a matter of judicial discipline. To be noted, this course is adopted owing to the facts and circumstances of this case.

14 Now that this court as a matter of judicial discipline as mentioned supra is proceeding on the basis that various time frames adumbrated in Regulation 17 of CBLR 2018 are mandatory and not directory, what has to be examined is whether there is violation of 90 days time frame set out in sub regulation (5) of Regulation 17 of CBLR 2018.

15 Before this Court proceeds further, it is to be noted that learned counsel for writ petitioner submitted that the aforesaid order of learned Single Judge dated 22.11.2018 made in W.P.Nos.26923 and 26934 of 2018 has not been carried in appeal by way of any intra-court appeal thus far and that it has not been reversed or stayed. In other words, it is the specific submission of learned counsel for writ petitioner that aforesaid order of Hon'ble Single Judge is operating.

16 Core question in instant case is whether there is violation of 90 days time frame adumbrated in regulation 17(5) of CBLR 2018.

17 This takes us to the aspect of aforesaid order of learned Single Judge being distinguishable on facts. While examining this aspect of the matter, it came to light that aforesaid order of learned Single Judge is clearly distinguishable on facts. There are two distinguishing features and the same are as follows :

(i) In the aforesaid order of learned Single Judge, the noticee writ petitioner had sent a reply within 30 days time frame stipulated under Regulation 17(1). To be noted, in that case, the date of SCN is 13.04.2018 and the reply of writ petitioner is dated 25.04.2018. This comes out clearly in the summation of facts in paragraph 2 of the said order and the relevant portion reads as follows :

"2..... The petitioner was further issued with a show cause notice dated 13.04.2018 proposing to revoke the license, forfeit the security deposit and impose penalty. The said show cause notice was issued under regulation 20(1) of the said Rules. The third respondent was appointed as the Inquiry Officer.

The petitioner submitted their reply dated 25.04.2018 and appeared before the Inquiry Officer on 14.05.2018...."

Therefore, the enquiry report was submitted beyond 90 days period under Regulation 20(5) of CBLR 2013 in that case.

(ii) In the aforesaid order, the plea of alternate remedy had not been raised. This comes out clearly from the summation of rival submissions. Therefore, writ petition was not tested on the plea of alternate remedy.

18 To be noted, in the instant case, SCN is dated 14.09.2018 and learned counsel for writ petitioner submitted that SCN was served on writ petitioner on 15.09.2018. However, the reply of writ petitioner, i.e., written statement of defence of writ petitioner was admittedly sent only on 22.11.2018, which is not within 30 days time limit for such reply stipulated in Regulation 20(1) of CBLR 2013 and 17(1) of CBLR 2018.

19 Therefore, 90 days time frame stipulated under Regulation 20(5) of CBLR 2013 can be tested only by taking 22.11.2018 as the reckoning date in this case as reply / statement of defence has been given by writ petitioner only on that date. The writ petitioner not having submitted its statement of defence to SCN within 30 days time frame under Regulation 17(1), cannot claim the benefit of Regulation 17(5) to have the impugned order quashed. In other words, 90 days from the date of SCN is when the noticee submits his statement of defence within prescribed 30 days. There are two reasons for this view. One reason is the time frames are sequential and have a cascading effect on one another qua the overall objective of CBLR. The second reason is sub regulation which provides for SCN and reply / statement of defence of noticee should be read as a whole without severing the SCN and the reply / statement of defence as both are contained together in sub regulation (1). To be noted, sub regulation (5) talks about notice within the meaning of sub regulation (1) which means sub regulation (1) has to be read in its entirety without severing the notice and the reply.

20 As already alluded to supra, as a matter of judicial discipline, this Court proceeds on the basis that all these time frames have been held to be mandatory. A careful perusal of Regulations 17 and 20 of CBLR 2018 and CBLR 2013 respectively bring into sharp focus that these time limits are sequential for proceedings and they certainly have cascading effect on one another. This principle comes out clearly from a circular issued

by the 'Central Board for Excise and Customs' ('CBEC' for brevity) being Circular No.9/2010 dated 08.04.2010. To be noted, this circular has been extracted by the Division Bench of Delhi High Court in Impexnet Logistic case, referred to supra. Paragraph 7.1 of the said circular is relevant and the same reads as follows :

"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. "

(underlining made by Court to highlight and supply emphasis)

21 A perusal of the aforesaid paragraph reveals that time frames prescribed under various sub regulations of Regulations 17 and 20 of CBLR 2018 and CBLR 2013 respectively are not time frames in isolation, but are sequential time frames obviously having cascading effect on one another, so that there is prescription of an over all time limit of 9 months. When the time frame of 90 days under sub regulation (5) of Regulation 17 is mandatory, the time frame of 30 days (for reply to SCN) stipulated under sub regulation (1) is also mandatory. When that has been delayed and the matter has progressed, the reckoning dates will automatically re-arrange themselves.

22 Sub Regulation (5), no doubt says that 90 days from the date of issue of notice under sub regulation (1), but it is a natural corollary and inevitable legal sequitur that it will be 90 days from the date of issue of a notice under sub regulation (1), when noticee submits written statement of defence within 30 days under the same sub regulation (1). Sub regulation (1) has to be read as a whole. When the noticee submits reply to SCN beyond 30 days period, such noticee cannot take advantage of sub

regulation 17(5) and have the impugned order quashed. If 22.11.2018 being the date of statement of defence submitted by writ petitioner is taken as reckoning date, the submission of enquiry report on 21.02.2019 is within 90 days period.

23 Having said this, this court also adds that if the respondent had directed the Assistant Commissioner of Customs to enquire into the matter after expiry of 30 days from the issue of SCN by holding that the noticee has not submitted reply to SCN within the stipulated 30 days (obviously under sub regulation (2)), the trajectory of this matter could have well been different.

24 Therefore, while the principle that time frames are mandatory and not directory is operating, as it comes out clearly from the aforesaid circular that time frames at various stages are intended to prescribe an over all time frame, a noticee who has not adhered to the time frame applicable to it, cannot take advantage of the alleged violation of time frame on the part of the department, more so when there is no delay if 90 days is computed from the date of reply to SCN. To be noted, in the instant case, this Court has already held that 90 days from the date of issuance of SCN is when the noticee submits reply within 30 days and in a case like this, when the noticee has not sent the statement of defence / reply to SCN beyond 30 days time frame, 90 days time frame in the regulation if at all can be computed only from the date of reply and if so computed in the instant case, it is within 90 days period prescribed under Regulation 20(5) of CBLR 2013 and Regulation 17(5) of CBLR 2018.

25 Therefore, in the peculiar facts and circumstances of this case, this court comes to a conclusion that it cannot be gainsaid by writ petitioner that there is violation of Regulation 17(5) of CBLR 2018 and have the impugned order set aside on that lone ground.

26 This takes us to alternate remedy plea. There is no dispute before this court that alternate remedy against the impugned order is available to the writ petitioner by way of an appeal to the 'Customs Excise and Service Tax Appellate Tribunal' ('CESTAT' for brevity) under Section 129A(1) of the Customs Act, 1962.

27 Having decided / returned a finding that impugned order is not hit by Regulation 17(5) of CBLR 2018, this court deems it appropriate to relegate the writ petitioner to alternate remedy of appeal before CESTAT as the impugned order may have to be tested on merits which turns heavily on facts and records.

28 With regard to alternate remedy and exercise of writ jurisdiction under Article 226 of the Constitution of India, it has been laid down in a long line of authorities by Hon'ble Supreme Court that exercise of writ jurisdiction for interfering with orders notwithstanding alternate remedy will be only in cases of certain specific exceptions.

29 Though there is a long line of authorities of Hon'ble Supreme Court, this Court is of the view that it will suffice to refer to Satyawati Tondon case being United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110 and Mathew K.C. case being Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85.

30 The exceptions for interfering notwithstanding alternate remedy in writ jurisdiction that can be culled out are : (a) lack of jurisdiction, (b) violation of 'principles of natural justice' ('NJP' for brevity) and (c) alternate remedy being illusory or not efficacious.

31 To be noted, the aforesaid adumbration of exceptions is not exhaustive, but is only a broad outline which is imperative for appreciating the instant order.

32 In the instant case, it is nobody's case that it falls under any of the aforesaid exceptions. In other words, it is nobody's case that impugned order has been passed by the respondent without jurisdiction or that there has been violation of NJP. It is not writ petitioner's case that alternate remedy by way of an appeal to CESTAT under Section 129A(1) of the Customs Act is ineffective or illusory.

33 One more vital aspect of the matter which this court has borne in mind is the observation made by Hon'ble Supreme Court in Satyawati Tondon case. Hon'ble Supreme Court has held that while there will be no doubt that rule of alternate remedy is not an absolute rule, i.e., it is a rule of discretion and not a rule of compulsion, when it comes to cases pertaining to tax, cess, etc., (fiscal laws in general) it has to be applied with utmost rigour. In the case on hand, misuse of CBL (if the allegations are proved to be true) certainly has revenue implications. To be noted, it is the case of department that writ petitioner has permitted third party to use icegate login-id of CBL of writ petitioner, thereby permitting the import of high value BIS, IPR violated goods.

34 This aspect of the judgment of Hon'ble Supreme Court in Satyawati Tondon case has been reiterated in Mathew K.C. case and relevant paragraph in Mathew K.C. reads as follows :

"15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260]*, has also not been kept in mind before passing the impugned interim order: (SCC pp. 123-24, para 46)

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556]*, Whirlpool

Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

35 In the light of all that have been set out supra, i.e., in the light of the narrative and discussions supra, this Court passes the following order :

(a) It is held that the impugned order of respondent being order dated 23.05.2019 bearing reference Order-in-Original No.69097/2019 is not vitiated by violation of 90 days time frame either under Regulation 17(5) of CBLR 2018 or under Regulation 20(5) of CBLR 2013;

(b) All other questions pertaining to impugned order and challenge to the same are left open;

(c) It is open to writ petitioner to file an appeal under section 129A(1) of the Customs Act, 1962, to CESTAT against impugned order;

(d) If writ petitioner chooses to avail alternate remedy and file an appeal to CESTAT, it is open to writ petitioner to seek condonation of delay as well as exclusion of time spent in this writ petition in the light of section 14 of the Limitation Act and if writ petitioner chooses to do so, CESTAT shall decide such applications on its own merit;

(e) Subject to delay condonation application and application if any seeking exclusion of time under section 14 of the Limitation Act, if writ petitioner chooses alternate remedy, CESTAT shall decide the appeal on merits by examining all grounds and questions except violation of Regulation 17(5) of CBLR 2018 and Regulation 20(5) of CBLR 2013 which has been decided by this Court in instant order and dispose of the appeal as expeditiously as possible.

(f) Considering the importance of time frames in such matters, this court requests the Tribunal, i.e., CESTAT to dispose of the appeal as expeditiously as possible and in any event, within a time frame of three months from the date on which the appeal is filed, if it is filed.

36 This writ petition is disposed of on the above terms.
No costs. Consequently, connected miscellaneous petition is
closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

vvk

To

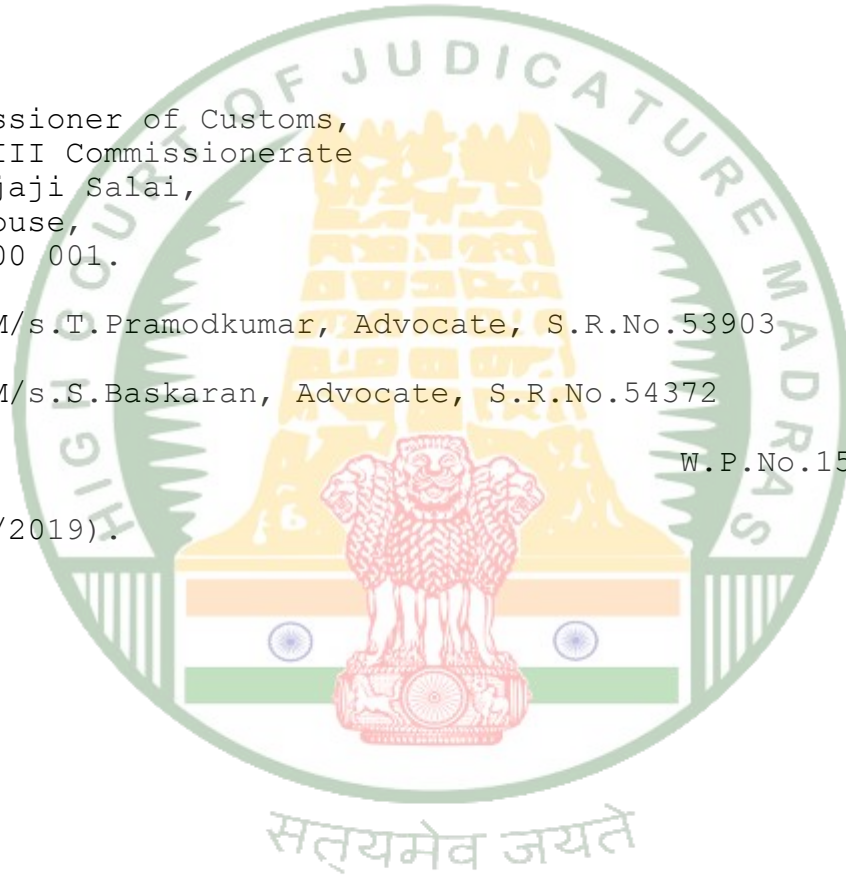
The Commissioner of Customs,
Chennai VIII Commissionerate
No.60, Rajaji Salai,
Customs House,
Chennai-600 001.

+1 cc to M/s.T.Pramodkumar, Advocate, S.R.No.53903

+1 cc to M/s.S.Baskaran, Advocate, S.R.No.54372

W.P.No.15544 of 2019

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