IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.20366 of 2020 and
WMP.No.25157 of 2020

M/s.Aristo Shipping Services,
No.20, Narayanappa Street,
Room no.3, 1st Floor, Mannady,
Chennai-600 001.
Rep. By its Partner S.Lakshmipathy …Petitioner

Vs.

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

Prayer: 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.76964/2020 dated 19.11.2020 passed by the respondent herein and to quash the same, only to the extent of para 26(i) of the impugned order, concerning the imposition of penalty of Rs.50,000/- under Regulation 18 r/w. Regulation 14 of CBLR, 2018, for violation of Regulations 10(1) and 10(n) of CBLR, 2018, as against the petitioner firm/customs broker M/s.Aristo Shipping Services (License No.R-32/2009-CHA (PAN NO.AAQFA8679MCH001), as the said order of imposition of penalty is without jurisdiction and without following the due procedures of law and the Regulations under CBLR, 2018 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.

For Petitioner : Mr.S.Baskaran
For Respondent : Mr.K.Ravi, Senior Standing Counsel

O R D E R

Heard Mr.S.Baskaran, learned counsel for the petitioner and Mr.K.Ravi, learned Senior Standing Counsel for the respondent.

2. The petitioner has challenged an order passed on 19.11.2020 imposing penalty of a sum of Rs.50,000/- under Regulation 18 r/w Regulation 14 of the Customs Brokers Licensing Regulations, 2018 (CBLR) for alleged violation of Regulations 10 (a) and 10(n) of the CBLR.

3. The dates and events in this matter are admitted and are set out below specifically to examine whether the procedure followed by the respondent leading to the passing of the order-in-original is in line with the timelines set out under the CBLR. The relevant provisions of the CBLR, that is Regulations 17(1), 17(5) and 17(7) are relevant, and extracted below:

> '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.
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> (2).........
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> (3).........
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> (4).........
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> (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).
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> (6).........
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> (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.'

4. The procedure as set out is that the Principal Commissioner or Commissioner is to issue a notice in writing to the Customs Broker within a period of 90 days from date of receipt of an offence report in the matter. The notices are to state the grounds upon which the license is proposed to be revoked or penalty is to be imposed and should call for a reply from the concerned broker. The offence report in this case is dated 26.11.2018 and thus the period of 90 days would expire on or before 25.02.2019. However, the notice has been issued only on 30.08.2019, which constitutes a violation of the timeline set out in Regulation 17(1), violation one.

5. That apart, Regulation 17(5) requires the Assessing Authority, being the Deputy Commissioner or Assistant Commissioner of Customs, to prepare an enquiry report and submit the same within a period of 90 days from date of issuance of the notice contemplated under Regulation 17(1). As we saw earlier, the notice under Regulation 17(1) is dated 30.08.2019, whereas the enquiry report is prepared only on 12.06.2020, which constitutes a violation of timeline set out under Regulation 17 (5), violation two.

6.Thirdly, the Principal Commissioner or Commissioner of Customs shall, after considering the enquiry report, passed an order either suspending or revoking the license within 90 days from submission of the enquiry report. The enquiry report is dated 12.06.2020 and the order-in-original thus ought to have been passed within a period of 90 days i.e. on or before 11.09.2020 whereas the impugned order has been passed on 19.11.2020, again beyond the stipulated timeline, violation three. In the impugned order, the officer reverses the suspension imposed but proceeds to levy penalty.

7. The challenge to the impugned order is on the ground of gross violation of the timelines that have been imposed under

Regulation 17 and the legal question that arises is a determination is as to whether the timelines are mandatory or directory. This issue has been considered in a slew of decisions rendered by this Court and which have been noticed by a Division Bench of this Court in CMA.No.730 of 2016.

8. By order dated 13.10.2017, the following questions were framed and decided by the Bench:

> '(i) Whether the orders for revocation of licence of the appellant is without jurisdiction in that the show cause notice for the same was issued beyond the mandatory time limit of 90 days as fixed by Regulation 20(1) of the CHALR, 2004?
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> (ii) Whether the Tribunal has acted in excess of its jurisdiction in that it confirmed the order of the Commissioner revoking the licence of the appellant firm in the absence of any evidence whatsoever as to the alleged violation of the provision of the CHALR by the appellant firm?'

9. At paragraphs-32 to 40, the Bench notices and discusses various orders passed by the Chennai Bench of the CESTAT as well as by this Court on the identical issue as arising in the present matter and concludes at paragraphs-41 and 42, that in the light of the settled position as revealed from the various decisions discussed, the issue as to whether limitation prescribed under the CBLR, (in that case Regulation 22(1) of the CHALR, 2004, which, admittedly, is in pari materia with the Regulations considered now), would be mandatory or not was no longer res integra and stood settled.

10. At paragraph-42, they say that once the limitation prescribed is held to be mandatory, then the force of that mandate would have to be adhered to strictly. Moreover and additionally, the Central Board of Excise and Customs in Circular No.9/2010-Cus., dated 08.04.2010 in F.No.502/5/2008-Cus VI has set out an overall time limit for completion of suspension proceedings against a license holder and states in para-7.1 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.'

Evidently, the purpose is to ensure that suspension is not indefinite and proceedings are completed promptly so as to cause the least prejudice to the parties concerned. In this case this constitutes the fourth violation of the time limits.

11. In the case dealt with by the Division Bench, there was a violation only of one timeline whereas, as noticed by me earlier, in the present case the time lines set out have been violated not once, but on four occasions. Thus, the impugned order has no legs to stand, particularly, since there is no dispute on the sequence of events or the dates on which the events have transpired. The impugned order is thus quashed.

12.This writ petition is allowed. Connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vs

To

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

W.P. No.20366 of 2020 and
WMP.No.25157 of 2020

SR II(CO)

GN(23/06/2021)