IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOMS APPEAL NO. 16 OF 2020

The Principal Commissioner of Customs (General) ….Appellant

V/s.

Mehul & Co. …Respondent

Mr. Dhananjay B Deshmukh for Appellant
Mr. Anil Balani for Respondent

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 28th APRIL 2022

P.C. :

1 Appellant is impugning an order dated 10th June 2019 passed by Customs Excise and Services Tax Tribunal (CESTAT) and has proposed the following questions of law:

> *"(i) Whether the findings of the CESTAT that there is considerable unexplained delay in conducting the enquiry proceedings is in the teeth of the judgment of this Honourable Court in 2018(361) E.L.T. 321 (Bom.) and is based on no evidence or partly relevant or partly irrelevant evidence and is otherwise perverse and arbitrary ?*
>
> *(ii) Whether the findings of the CESTAT that the Respondents were conducting their business through their employee is based on no evidence or partly relevant or partly irrelevant evidence and is otherwise perverse and arbitratry ?*
>
> *(iii) Whether the CESTAT is right in law in setting aside the revocation of the CB Licence and forfeiture of the entire amount of Security Deposit ?"*

2 Mr. Deshmukh submitted that CESTAT has not strictly followed the views of this court in the matter of ***Principal Commissioner of Customs (General) Mumbai Vs. Unison Clearing P. Ltd.*** reported in ***2018(361) E.L.T. 321 (Bom)***.

3 Respondent no.1 are custom brokers (CB) having Licence No.11/755 and were operating in terms of Custom Broker Licensing Regulations, 2013. Respondents had filed a bill of entry No.8060973 dated 27th September 2012. After investigations were undertaken in respect of the goods covered by the bill of entry, it was found that the goods had been grossly misdeclared in terms of value, quantity and description. It was also found that even the importer on record had obtained IEC Licence improperly. The commissioner of Customs (General) Mumbai had passed an order revoking the CB Licence issued to respondent and also forfeited the entire amount of security deposit of respondent. Respondent had impugned the order of commissioner of Customs before CESTAT. CESTAT had initially passed the order dated 10th November 2016 setting aside the order passed by the Commissioner of Customs on the ground that there was gross delay in conducting inquiry proceedings beyond the time prescribed in Regulation 20 of the Custom Broker Licencing Regulations. The customs department challenged that order in this court by way of an appeal and this court after setting aside the order of CESTAT remanded the matter for denovo consideration by holding that the time limit contained in Regulation 20 cannot be construed to be mandatory and it would be only directory. The court held that though the time line framed in the Regulation needs to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit

was not adhered to. This would ensure that the proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances will be ensured. The court also held one step by which the unnecessary delays can be curbed is recording of reasons for the delay or non adherence to this time limit by the officer conducting inquiry and making him accountable for not adhering to the time schedule. The court further held that these reasons can be tested to derive the conclusion whether the deviation from the time line prescribed in the Regulation is "reasonable". The court felt that this was the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties namely, Revenue and Customs House Agent. It will be useful to quote the relevant portion from the said judgment :

> *"Applying the aforesaid principle to Regulations 19 and 20, it can be safely concluded that if the provision is construed to be mandatory, then in such circumstances, mere nonadherence to the time schedule would result into conferring a benefit upon a otherwise undeserving Customs House Agent to have his suspension revoked, or to have the action of revocation of his licence being declared invalid, though he would have been charged with grave and serious allegations of indulging into any misconduct rendering him unfit to transact the business at customs station. However, on the other hand, it would also not be appropriate on part of the Revenue Authorities to indefinitely postpone the proceedings and deal it in a casual manner, by keeping the licence suspended for a considerably long period of time, resultantly, keeping the customs house agent out of business, which may be the only source of livelihood for him. The whole purpose of the CBLR2013 being to frame a time line so that undue delay in the proceedings can be avoided, and the balance will have to be struck between the strict adherence to the said time schedule to such an extent that even a day's delay would prove to be fatal and render the entire action invalid and on the other hand, to grant such a discretion to the revenue to continue the said action of suspension of licence for an indefinite period depriving the customs brokers of their right to carry on business on the basis of the licence, on a spacious ground that the charges levelled against him are being enquired into. Neither of these two extreme situations are ideal and balance will have to be struck by construing that the time limit for completion of inquiry for*

> *revoking the licence or imposing the penalty and keeping the licence under suspension should be "Reasonable period", depending on the facts and circumstances of each case. <u>There cannot be any absolute principle, which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of each case</u> since on one hand, the purpose of prescription of the time limit by the Regulation is to cast a duty on the Revenue Authorities to act within the time frame since it adversely affects the interest of the licensee and on the other hand the licensee should not be permitted to take an advantage of some delay at the instance of the Revenue, which is beyond its control since the revenue administration needs to be granted certain concessions which may be on account of administrative exigencies, and the department working at different levels through different persons. The principles of fairness and equity demands that when there is deviation from the time schedule prescribed in the Regulation, the Revenue enumerates the reasons and attributes them to an officer dealing with it and also accounts for every stage at which the delay occurs. Every endeavour should be made to adhere to the time schedule but in exceptional circumstances, which are beyond the control of the revenue if the time schedule is not adhered to, an accountability be fastened on the Revenue, to cite reasons why the time schedule was not adhered to, and then leave the decision to the adjudicating authority to examine whether the explanation offered is reasonable or reflects casual attitude on behalf of the Revenue. This is the only way how the Regulation can be made effective and worthy of its existence so as to safeguard the interest of the customs house agent, who is in a position of the delinquent and faces an inquiry somehow similar to an inquiry in disciplinary proceedings on one hand and the revenue in the capacity of the administration on the other hand."*
>
> *(emphasis supplied)*

We have to keep in mind, as held by this court, that this court also observed that there cannot be any absolute principle which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of the each case.

4 The Tribunal has listed a chronology of dates and events before the inquiry officer. The Tribunal has made factual observations that from the date sheet, as submitted, there appears to be considerable unexplained delay in various steps of proceedings. The Tribunal has made factual observations that: a) no explanation has come forth for the delay in

issuance of notice which was issued beyond 90 days of the receipt of offence report; (b) the delay in start of inquiry proceedings after the issuance of notice also is not explained; (c) what was the reason for not calling Mr. Mehul Sanghavi immediately after 11th February 2014 has also not come forth; (d) Why Mr. Mehul Sanghavi was called for examination after lapse of nearly six months is also not explained; (e) if non availability of Mr. Mehul Sanghavi was the cause for delay, the fact is, proceedings were concluded and report submitted on 15th December 2014 without any actual examination of Mr. Mehul Sanghavi. The Tribunal therefore, felt that there was delay at every stage of proceedings and the delay has not been justified or explained satisfactorily.

6 Mr. Deshmukh submitted that in the findings of the inquiry officer he has explained the delay. In our view also the delay has not been satisfactorily explained, particularly upto 14th August 2014.

7 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

8 The appeal is devoid of merits and it is dismissed with no order as to costs.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**

Meera Jadhav