IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.15097 of 2020 &
WMP.No.18823 of 2020

M/s.Aristo Shipping Services,
No.20, Narayanappa Street,
Room No.3, 1st Floor, Mannady,
Chennai-600 001,
Rep. by its Partner Mr.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, to issue a Writ of Certiorari, calling for the records pertaining to Order in Original No.72111/2019 dated 21.10.2019 passed by the respondent herein and to quash the same, to the extent of imposition of penalty of Rs.50,000/- under Regulation 14 & 18 of CBLR, 2018 r/w. Regulation 18 & 22 of CBLR, 2013 and forfeiture of security deposit of Rs.75,000/- as against the petitioner firm/customs broker M/s.Aristo Shipping Services, holding License No.R-32/2009/CHA, as the said order of imposition of penalty and forfeiture of security deposit is without jurisdiction and without following the due procedure 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.Mrs.R.Hemalata
Senior Standing Counsel

ORDER

The petitioner challenges an order-in-original passed in terms of the provisions of the Customs Broker Licensing Regulations, 2018 (in short 'CBLR Regulations/Regulations') dated 21.10.2019. The main ground on which the impugned order assailed is the bar of limitation.

2. The procedure for cancellation/revocation of licence is regulated by the CBLR Regulations, particularly Regulation 17, which deals with the procedure for revocation of license or imposition of penalty.

3. In terms of Regulation 17(1) of CBLR Regulations, the Principal Commissioner or Commissioner of Customs must issue a notice in writing to the customs broker within a period of 90 days from date of receipt of an offence report, proposing to revoke license or impose penalty and calling upon the customs broker to submit a written statement of defence within 30 days of receipt of the notice. The broker is to specifically seek personal hearing, if he so desires.

4. Regulation 17(2) states that upon receipt of the written statement, or where no such statement has been received within the time limit of thirty days, as scheduled in Regulation 17(1), the Commissioner will direct the

Deputy Commissioner or Assistant Commissioner of Customs to conduct an enquiry into the grounds that are not admitted by the broker.

5. Regulation 17(3) states that the Deputy Commissioner/Assistant Commissioner of Customs will, in the course of enquiry, consider all available documentary evidences, take oral evidence, as may be relevant to the enquiry, and hear the broker for the purpose of ascertaining the correct position of facts.

6. Regulation 17(4) grants the customs broker an opportunity of cross-examination of those persons whose examination is relied upon by the enquiring officer and where such permission of cross-examination is declined by the enquiring officer, such rejection of the request shall be supported by reasons recorded by the officer.

7. Regulation 17(5) states that upon conclusion of the enquiry, the Deputy Commissioner or Assistant Commissioner of Customs should prepare a report of enquiry recording his reasons for the findings and submit the same within 90 days from date of issue of notice under Section 17(1). This enquiry report, in the present case, is dated 28.02.2019.

8. This brings us to the second limb of the procedure that requires the Principal Commissioner of Customs to furnish the customs broker a copy of

the enquiry report and requiring the broker to submit a representation, if he so desires, as against the said report.

9. The enquiry report has been furnished to the petitioner under cover of letter dated 07.03.2019. Admittedly, the petitioner, in this case, did not furnish any response to the enquiry report.

10. The third limb of the procedure would then stand triggered by virtue of Regulation 17(7), where the Principle Commissioner/ Commissioner of Customs is expected to consider the report as well as the representation of the broker, and pass orders either revoking the suspension of license or revoking the license itself. The revocation is to be carried out within 90 days from date of submission of the report by the Deputy Commissioner/Assistant Commissioner under Regulation 17(5).

11. The proviso to Regulation 17(7) states that no order of revocation of license shall be passed unless an opportunity is granted to the customs broker to be heard in person. The scheme of Regulation 17, as set out above, makes it clear that the entirety of the procedure under limbs 1, 2 and 3 of Regulation 17 are to be exhausted within the overall period of 90 days from the date of submission of the enquiry report, in this case, submitted on 28.02.2019.

12. However, the authority has not listed the matter for personal hearing till 20.09.2019, when the broker/petitioner did appear before the authority and made an oral representation. The fixation of the personal hearing on 20.09.2019 is beyond the period of 90 days, as required under Regulation 17(7) as the period expired on 27.05.2019.

13. Thus, seen in this light, impugned order dated 21.10.2019 is beyond the time stipulated under CBLR Regulations, specifically Regulation 17. This is one aspect of the matter.

14. The Central Board of Excise and Customs, Ministry of Finance (Department of Revenue) has issued Circular No.9/2010-cus dated 04.04.2010, clarifying the procedure in regard to issuance and suspension of license. Interalia, paragraph 7.1 sets out a time limit for completion of proceedings for suspension against a CHA licensee under Regulation 22 of CBLR Regulations, 2013, which is, admittedly, analogous to Regulation 17 of CBLR Regulations, 2018.

15. Paragraph 7.1 of the Circular is relevant insofar as the present writ petition is concerned and is extracted below:

> *(v) time limit for completion of suspension proceedings against CHA licensee under regulation 22:*
>
> *7.1. The present procedure prescribed for completion of regular suspension proceedings take 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.'

16. Thus, de hors the specific, and staggered time limits set out under Regulation 17 for various procedures culminating in order of revocation of license/cancelling of license, paragraph 7.1 sets an overall time limit of nine months from date of receipt of an offence report for completion of proceedings.

17. In the present case, the date of license report is unknown and in this context, it would be relevant to refer to a decision of a learned Single Judge of this Court in the case of *A.M.Ahamed & Co. Vs. Commissioner of Customs (Imports), Chennai,* [(2014) 309 ELT 433]. This Court, in an identical situation, where the date of offence report was unavailable, has proceeded on the basis that in such a situation it would be appropriate to

adopt the date of suspension as the relevant date. This order is stated to have attained finality by both learned counsel before me and thus the settled position as on date is to the effect that where the date of offence report is unavailable, a legally appropriate substitute would be the date of suspension for purposes of computation of limitation.

18. In the present case, the date of order of suspension is 20.09.2018 and hence, the overall period of nine months, as stipulated in para 7.1 of the aforesaid Circular, expires on 19.06.2019. The impugned order being passed on 21.10.2019, is barred by limitation on this ground as well.

19. The specific and repeated submissions of the learned Standing Counsel appearing for the respondents is that the delay in this case is attributable to the petitioner insofar as there has, admittedly, been no submission made in response to the enquiry report.

20. In the considered view of the Court, delay, whether attributable to the revenue or, for that matter, the broker, would not extend the timelines as set out both in the Circular and Regulations. No doubt there was no response on the part of the broker in responding to the enquiry report. However, nothing prevented the officer to have taken action scrupulously in line with the time periods set out under Regulation 17 of CBLR Regulations and para

7.1 of the Circular, even sans any co-operation on the part of the noticee.

21. As regard the submission of the respondent to the effect that the time limit set out under Regulation is only directory and not mandatory, this issue is no longer res integra and has been decided by a Division Bench of this Court in the case of *Santon Shipping Services Vs. Commissioner,* CMA.No.730 of 2016 dated 13.10.2017.

22. Para 41 to 43 of the decision in *Santon Shipping Services* (supra) are relevant in this context and are extracted below:

> *41. In view of the aforesaid Judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.*
>
> *42. Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored.*
>
> *43. It is not the case of the 1st respondent that the 90 days limitation contemplated under Regulation 22(1), is directory. It is also not the case of the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.*

23. In fact, the Bench has recorded at para 43 that the argument that the timelines provided was not directory was never the case of the respondent.

24. In light of the discussion as above, the impugned order is found to

be barred by limitation and is set aside on this score. This writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Ska **14.11.2022**

Index : Yes
Speaking Order

To

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

Dr.ANITA SUMANTH, J.,
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