IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.07.2023	**Pronounced on:** 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.9145 of 2020, 5782 & 5787 of 2021 and
W.M.P.Nos.11154 of 2020, 6381 & 6389 of 2021

W.P.No.9145 of 2020:

M/s.Jai Logistics Services Pvt. Ltd.,
Represented by its Director, A.Velu,
Shop No.3A, Indian Airlines Stadium Complex,
Meenambakkam, Chennai – 600 027. .. Petitioner

Vs.

The Principal Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai – 600 001. .. Respondent

W.P.Nos.5782 & 5787 of 2021:

M/s.Jai Logistics Services Pvt. Ltd.,
Represented by its Director, A.Velu,
Shop No.3A, Indian Airlines Stadium Complex,
Meenambakkam, Chennai – 600 027. .. Petitioner (in both cases)

Vs.

1.The Principal Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs (CCO),
Inquiry Officer,
Chennai IV Commissionerate,
Customs House, 60 Rajaji Salai,
Chennai – 600 001. .. Respondents
(in both cases)

Prayer in W.P.No.9145 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to impugned order dated 12.06.2020 passed in F.No.R-397/CHA by the respondent and quash the same.

Prayer in W.P.No.5782 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to impugned Show Cause Notice dated 21.06.2020 passed in F.No.R-397/CHA by the 1st respondent and quash the same.

Prayer in W.P.No.5787 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to impugned Show Cause Notice dated 30.12.2020 passed in F.No.R-397/CHA by the 1st respondent and quash the same.

(In all cases):

For Petitioner : Mr.Hari Radhakrishnan

For Respondent(s) : Mr.Rajnish Pathiyil
Senior Standing Counsel

COMMON ORDER

By this common order, all the three Writ Petitions are disposed of.

2.In W.P.No.9145 of 2020, the petitioner has challenged the impugned order dated **12.06.2020** passed by the Principal Commissioner of Customs suspending the petitioner's Customs Broker License under Regulation 16 of the Customs Brokers Licensing Regulations (CBLR), 2018.

3.In W.P.No.5782 of 2021, the petitioner has challenged the Show Cause Notice bearing Ref.No.R-397-CHA (Case File) dated 21.06.2020 issued by the first respondent/Principal Commissioner of Customs under Regulation 17(1) of Customs Brokers Licensing Regulations (CBLR), 2018 for revocation of license.

4.The said Show Cause Notice also calls upon the petitioner to show cause why the security deposited by them should not be forfeited and why penalty should not imposed on the petitioner under Regulation 14 and 18 of the Customs Brokers Licensing Regulations (CBLR), 2018. The first respondent / Principal Commissioner of Customs is the licensing authority under the aforesaid Regulation.

5.In W.P.No.5787 of 2021, the petitioner has challenged the impugned letter dated 03.02.2021 bearing reference F.No.R-397-CHA (Case File) towards Inquiry Report of the Officer/Assistant Commissioner of Customs (COO) dated 30.12.2020 under Regulation 17(5) of the aforesaid regulation.

6.The principle attack in these writ petitions is that in terms of Regulation 17(5) of the aforesaid Regulation, Inquiry by the Inquiry Officer ought to have been completed within a period of ninety (90) days from the date of issuance of the Show Cause Notice dated **21.06.2020**.

7.In other words, the Inquiry Report should have been submitted on or before **21.09.2020**, whereas the Inquiry Report impugned in W.P.No.5787 of 2021 was issued only on **30.12.2020.**

8.It is submitted that ordinarily, the time for completing the Inquiry would have expired on 21.09.2020. However, due to the outbreak of Covid-19 pandemic and by Notification No.G.S.R.601(E) dated

30.09.2020, the Central Board of Indirect Taxes and Customs, extended the time up to 31.12.2020 under the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

9.It is the specific case of the petitioner that the Inquiry Report was however made ready on 30.12.2020 but was served on the petitioner only on 03.02.2021.It is submitted that the Inquiry Report was forwarded to the first respondent only on 07.01.2021 as is evident from the seal of the Office of the Deputy Commissioner of Customs in the Inquiry Report enclosed along with the covering letter dated 03.02.2021 issued to the petitioner.

10.It is submitted that once there was a serious lapse on the part of the Inquiry Officer in forwarding the report dated 30.12.2020 within the stipulated time. It is submitted that the time was extended up to **31.12.2020** vide Notification No.G.S.R.601(E) dated 30.09.2020 of the Central Board of Indirect Taxes and Customs. Therefore the entire Inquiry Report dated 30.12.2020 was vitiated under the provisions after the Regulations and therefore has to go and it is therefore submitted that W.P.No.5787 of 2021 is to be allowed. That apart, it is submitted that the petitioner is also facing parallel proceedings under the provisions of the Customs Act, 1962, for imposition of penalty and therefore there was double jeopardy.

11.On merits, it is submitted by the learned counsel for the petitioner that the petitioner is merely a Customs House Broker. The petitioner had no role play in the alleged fraud committed by the exporter, who allegedly wrongly claimed Duty Draw Back under the provisions of Section 75 of the Customs Act, 1962 read with Customs, Central Excise and Service Tax and Drawback Rules, 2017.

12.It is therefore submitted that even otherwise, the entire proceedings was delayed and therefore, the proceedings initiated under the provisions of the aforesaid regulations are liable to be dropped in terms of the decisions of this Court and that of the Delhi High Court in the following cases:-

(i)**Carewell Shipping Private Limited Vs. Commissioner of Customs, Chennai**, 2019 (368) E.L.T. 1059 (Mad.)
(ii)**KTR Logistics Solutions Private Limited Vs. Commissioner of Customs, Chennai**, 2020 (371) E.L.T. 685 (Mad.)
(iii)**Indair Carrier Private Limited Vs**

Commissioner of Customs (General), 2016 (337) E.L.T. 41 (Del.)

(iv) **Impexnet Logistic Vs. Commissioner of Customs (General)**, 2016 (338) E.L.T. 347 (Del.)

(v) **Thilagarathinam Match Works Vs. Commissioner of Central Excise, Tirunelveli,** 2013 (295) E.L.T. 195 (Mad.)

(vi) **Kunal Travels (Cargo) Vs. CC (I & G), IGI Airport, New Delhi,** 2017 (354) E.L.T. 447 (Del.).

13.The learned counsel for the petitioner has also drawn attention to the decision of this Court in **HSN Shipping Private Limited** Vs. **Commissioner of Customs, Chennai**, 2020 (372) E.L.T. 689 (Mad.), wherein, following decisions were followed:-

(i) **Masterstroke Freight Forwarders Private Limited** Vs. **Commissioner**, 2016 (332) E.L.T. 300 (Mad.)

(ii) **Patriot Freight Logistics System** Vs. **Commissioner**, 2017 (350) E.L.T. 59 (Mad.)

(iii) **Santon Shipping Services** Vs. **Commissioner** in C.M.A.No.730 of 2016 dated 13.10.2017.

(iv) **Titaghur Paper Mills Co., Ltd. And Ors. vs. State of Orissa and Ors.**, (1983)2SCC 433

(v) **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.,** (1998) 8 SCC 1

(vi) **State of Uttar Pradesh and Ors. vs. Dharmander Prasad Singh and Ors.,** AIR 1989 SC 997

(vii) **Haryana Urban Development Authority and Ors. vs. Roochira Ceramics and Ors.,** (1996) 6

SCC 584

(viii)**Nepa Agency Co., Pvt., Ltd., and Ors., vs. Union of India and Ors.,** 2015(321) ELT 620 (Cal.)

(ix)**D.V.R.Freight Forwarders Pvt.Ltd., vs. The Commissioner of Customs (Seaport-Import), Chennai and Ors.,** 2015(325) ELT 848 (Mad.)

(x)Commissioner of Customs vs. K.M.Ganatra and Co., (2016)4 SCC 687

(xi)**Aristo Shipping Services vs. Principal Commr. Of Cus., Chennai VII**, 2021(377) E.L.T.562 (Mad.)

(xii)**Leo Cargo Services vs. Commr.of Cus., Airport & General, New Delhi**, 2022(382) E.L.T.30 (Del.)

Hence, prays for allowing the writ petitions.

14.On the other hand, Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel (SCGSC) for the respondents in W.P.No.9145 of 2020 and in W.P.No.5787 of 2021 submits that the proper stamp/seal in the Inquiry Report on 30.12.2020.

15.It is submitted that the learned counsel for the petitioner has given letters dated 23.09.2020 and 06.10.2020 to the second respondent to challenge Inquiry Report. The normal period for preparing a report is 90 days from the date of Show Cause Notice issued under Regulations

17(5) of the of the Customs Brokers Licensing Regulations (CBLR), 2018.

16.The learned Senior Standing Counsel for the respondents would submit that there is no dispute with the Inquiry Report was received by the Office of the Principal Commissioner. The office of the Assistant Commissioner of Customs (CBS) who acted as an Inquiry Officer is in the same complex where the office of the Principal Commissioner of Customs is situated. It is therefore submitted that there is no merits that the report was not submitted within 90 days of the Show Cause Notice in the present writ petitions.

17.It is further submitted that Inquiry Report dated 30.12.2020 of the Inquiry Officer, [the Assistant Commissioner of Customs (CCO), appointed under the Regulations] was directly forwarded to the first respondent/Principal Commissioner of Customs on 30.12.2020 i.e., on the same date. It is further submitted that there are no Internal Rules of Business for transmitting the aforesaid Inquiry Report as the Assistant Commissioner of Customs/ who was appointed as the Inquiry Officer directly reports to the first respondent, while, giving report under the regulations 17(5) of the Customs Brokers Licensing Regulations (CBLR), 2018.

> *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).*

Hence, he submits that there are no merits in the present writ petitions.

18.It is further submitted that after the Inquiry Report on 30.12.2020 was submitted with the first respondent/Principal Commissioner of Customs, the first respondent/Principal Commissioner of Customs has to merely pass a Speaking Order under the Regulations by imposing penalty or revoking the license or dropping the charges. Hence, it is though submitted that these writ petitions are premature and are liable to be dismissed.

19.The case was heard once again on 14.07.2023 after it was heard on 05.07.2023. The learned counsel for the respondent was directed to produce the official files of the Customs Department maintained by the

Department in so far as the enquiry report and communication to the Commissioner.

20.The learned counsel for the respondent would submit that there is no dispute with the Inquiry Report was received by the Office of the Principal Commissioner immediately as the Office of the Inquiry Officer namely, the Assistant Commissioner of Customs (CBS) who acted as an Inquiry Officer is in the same Complex where the office of the Principal Commissioner of Customs is situated and it is therefore submitted that there is no justification in the present writ petitions.

21.The learned counsel for the petitioner has placed reliance on the following decisions of the Courts :-

i) **Titaghur Paper Mills Co., Ltd. And Ors. vs. State of Orissa and Ors.**, (1983)2SCC 433

ii) **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.,** (1998) 8 SCC 1

iii)**State of Uttar Pradesh and Ors. vs. Dharmander Prasad Singh and Ors.,** AIR 1989 SC 997

iv) **Haryana Urban Development Authority and Ors. vs. Roochira Ceramics and Ors.,** (1996) 6 SCC 584

v) **Nepa Agency Co., Pvt., Ltd., and Ors., vs.**

Union of India and Ors., 2015(321) ELT 620 (Cal.)

vi)**D.V.R.Freight Forwarders Pvt.Ltd., vs. The Commissioner of Customs (Seaport-Import), Chennai and Ors.,** 2015(325) ELT 848 (Mad.)

vii)**Commissioner of Customs vs. K.M.Ganatra and Co.,** (2016)4 SCC 687.

22.The learned counsel for the respondents has also placed reliance on the decision of the Hon'ble Supreme Court in **Collector of Central Excise, Madras vs. M/s.M.M.Rubber and Co., Tamil Nadu,** 1992 Supp(1) SCC 471, rendered in the context of 35-E(3) of the Central Excise Act, 1944 wherein the Hon'ble Supreme Court held that the date of communication of the order to the parties have right re affected is not the relevant date for the purpose of determination whether the power has been exercised within the prescribed time.

23.The learned counsel for the respondents has also placed reliance on the decision of the Hon'ble Supreme Court in **the Commissioner of Income Tax, Kolkata-Z, Kolkata vs. Sri Subrata Roy,** 2014 SCC Online 6652, where the Court held that the question for consideration was whether the order dated 31st December 2008 could be said to have been passed on 31st December 2008 when the demand notice together with a copy of the order was served after 47 days. He submits it was wide gap of 47 days time was not long enough make anyone suspicious as regards the correctness of the date of the order. In any case, the presumption arise in view of clause (e) of Section 114 of the Indian Evidence Act, 1872 proves the fact that the order was passed on 31st December, 2008.

24.The learned counsel for the respondents has also placed reliance on the decision rendered by the learned Single Judge of this Court in **Shriwin Shipping & Logistics vs. The Commissioner of Customs, Chennai VIII Commissionerate,** W.P.No.15544 of 2019. Para Nos.14,19, 20 and 25 are reproduced below:-

> *"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.*
>
> *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)*

> *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."*

25.On perusing the files, it is noticed that there are Internal communication which has been signed by the Examining Officer(Customs Broker House) [EO(CBS)], Suptd.(CBS) and AC(CBS) of the three Officers. A note was prepared for communication of the

Enquiry Report dated 30.12.2020 to the petitioner. The Principal Commissioner has approved the note for sending the Enquiry Report to the petitioner only on 2nd February 2021.

26.The note also states that the cut-off date for submitting inquiry report was 27.09.2020 whereas, inquiry report was issued by the inquiry officer on 30.12.2020 which was received in the Customs Broker Section on 07.01.2021. It was without considering the extension period that was available to either parties, in view of the provisions of the taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

27.The file do not disclose as to whether an Inquiry report dated 30.12.2020 was communicated to the Office of the Commissioner earlier. It is the submission of the learned counsel for the respondents that the Inquiry Officer had directly sent to file to the office of the Principle Commissioner who is the adjudicating authority and the official note that was approved by the Principal Commissioner on 02.02.2021 and a decision taken by the Commissioner to forward it to the petitioner. The note prepared by the three Officers namely EO(CBS), Supdt.(CBS) and ADC(CBS), was approved by the Principal Commissioner on

02.02.2021. The Inquiry Report was therefore directed to be served on the petitioner and thus dispatched on 04.02.2021 and was received by the petitioner on 07.02.2021.

28.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the impugned order dated 12.06.2020 bearing reference F.No.R-397/CHA issued under regulation 16 of the Customs Broker Licensing Regulations, 2018 suspending the license of the petitioner.

29.The challenge to the aforesaid order dated 12.06.2020 bearing reference F.No.R-397/CHA issued under regulation 16 of the Customs Broker Licensing Regulations, 2018 in W.P.No.9145 of 2020 suspending the license of the petitioner is academic in the light of impugned Show Cause Notice dated 21.06.2020 bearing reference F.No.R-397/CHA issued to the petitioner under Regulation 18 of the Customs Broker Licensing Regulations, 2018.

30.That apart, the petitioner has also not shown any irregularity in the issuance of the impugned Show Cause Notice dated 21.6.2020 bearing reference F.No.R-397/CHA under the provisions of Customs Broker Licensing Regulations, 2018. Therefore, challenge to the impugned order dated 12.6.2020 bearing reference F.No.R-397/CHA suspending the petitioner's Custom House Broker license dated 12.03.2020 under the provisions of the Customs Broker Licensing Regulations, 2018 and the impugned Show Cause Notice dated 21.6.2020 bearing reference is without any merits.

31.Under these circumstances, W.P.No.9145 of 2020 and W.P.No. 5782 of 2021 are liable to be dismissed. The only issue that survives for consideration is whether the communication of the enquiry report dated **30.12.2020** of the Inquiry Officer namely the Asst Commissioner of Customs (CCO)/Inquiry Ofc by the Asst Commissioner of Customs (CBS) vide letter dated **03.02.2021** bearing reference F.No. R-397-CHA (Case File) can be Said to be in Accordance with the provisions of Customs Broker Licensing Regulation, 2018.

32.As per Regulation 17 (5) of the Customs Broker Licensing Regulation, 2018, the Inquiry Officer has to prepare a report and after recording his findings and submit a report within 90 days from the date of issuance of the Show Cause Notice.

33.In this case, the show cause notice was issued to the petitioner on **21.6.2020**. The suspension of the license of the Customs House broker license of the petitioner was on 12.6.2020. Both the event were during the period when the country was under lock-down immediately after the outbreak of COVID 19 pandemic. The Asst Commissioner of Customs (COO) was appointed as the Inquiry Officer.

34.Ordinarily the Inquiry Officer ought to have submitted a report by 20.9.2020 with the 1st respondent in accordance with Regulation 17 (5) of the Customs Broker Licensing Regulation, 2018. However, the report was made ready only on 30.12.2020. By this time, the Government had already promulgated the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 on 31.3.2020. The Ordinance was replaced by the Taxation and Other Laws (Relaxation and

Amendment of Certain Provisions) Act, 2020. The Act and the Ordinance came into force with effect from 31st day of March 2020.

35.As per section 6 of the aforesaid Ordinance and Act, the Central Government by Notification extended the time limit specified in, or prescribed or notified under the specified enactments which fall during the period between **20th of March, 2020** and **29th day of September 2020** or such other date after the **29th day of September 2020** for completion or compliance of such action as-

> **"(a) completion of any proceedings or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, the Tribunal, by whatever name called; or**
>
> **(b) filing of any appeal, the reply or application or furnishing of any report, document, return or statement, by whatever name called"**

to 30th of September 2020 or such other date after the of September 2020, as the Central government may, by notification specify in this behalf.

36.In this connection, the Central Board of Indirect Taxes and

Customs issued Notification on 30th of September, 2020 in GSR 601 E. The Central Government specified 30th day of December 2020 to be the end date of the period during which time limit specified in, or prescribed or notified under various enactments including the Customs Act , 1962. . Relevant portion of the said notification reads as under:-

> *"In exercise of the powers conferred by Section 6 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (No.38 of 2020), the Central Government hereby specifies that -*
>
> *(i) the 30th day of December, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the Finance Act, 1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and*
>
> *(ii) the 31st day of December, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended."*

37.Thus, 30th day of December, 2020 was the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the Finance Act, 1994 (32 of 1994) for the completion or compliance of such action as specified under clause (a) or (b) of Section 6 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (No.38 of 2020). 31st day of December 2021 was construed as the last day to which the time limit for completion of compliance of such action was extended.

38.The document filed by the Customs Department records that the file was received by the Customs House only on 07.01.2021. It reads as under:-

F.No. R-397 - CHA (case file)

Please refer the inquiry Report submitted by Mr. H. L. Srinath, AC, CCO in case of M/s. Jai Logistics Services Pvt. Ltd., placed as R.H.S.

In this regard, it is stated that Mr. H. L. Srinath, Asst. Commissioner of Customs, CCO, Chennai has been appointed as Enquiry Officer vide Show Cause Notice dated 29.06.2020.

As per Reg 17 (5) of the CBLR, 2018, the Inquiry Officer shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of 90 days from the issuance of the Show Cause Notice Report. In the instant case, the cut off date for submitting inquiry Report was 27.09.2020 whereas Inquiry report issued by Inquiry Officer on 30.12.2020 which was received in section on 27.01.2021.

As per Reg 17 (6) of the CBLR, 2018, The Commissioner of Customs shall furnish to the Customs broker a copy of the report of the Deputy/Asst. Commissioner of Customs 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.

As per Reg 17 (7) of the CBLR, 2018, 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 18 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).

In view of the above, if approved, we may forward the copy of inquiry report to the Customs Broker M/s. Jai Logistics Services Pvt. Ltd. Chennai for their reply on the Inquiry report.

File submitted for further instructions please.

29/1/21
EO (CBS)

29/1/21
SUPDT (CBS)

29/1/21
AC (CBS)

ADC (CBS)

(PRINCIPAL COMMISSIONER (VIE))

39.Copy of the internal file which preceded the communication of the enquiry report is extracted with. The 1st respondent has given approval for transmitting the enquiry report only on **02.02.2021**. Thus, it cannot be said that the Enquiry Report dated **30.12.2020** was communicated to the 1st respondent within 90 days from the issuance of the show cause notice and within the extended period as specified in the above notification issued for the purpose of section 6 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

40.Though, COVID 19 pandemic, did not abate and there was a 2nd wave till May-June, 2021, no notification has been brought to the attention of this Court that the time was further extended by the Central Board of Indirect Taxes, similar to the Notifications issued by the Central Board of Direct Taxes under the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 for the Purpose of Income Tax Act, 1961.

41.Since the time was not extended by any other notifications by the Central Government under Taxation and Other Laws (Relaxation and

Amendment of Certain Provisions) Ordinance, 2020 on 31.03.2020 as was replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the proceedings initiated under the provisions of the Customs Broker Licensing Regulation, 2018 has to abate.

42.Therefore, the failure on the part of the enquiry Officer to communicate the enquiry report within the period of **90 days** stipulated in Regulation 17 (5) of the Customs Licensing Broker Regulation, 2018 is fatal.

43.Proceedings have to therefore abate, since there was a failure in complying with the requirements of Regulation 17 (5) of the Customs Broker Licensing Regulation, 2018 and the enquiry report was not communicated in time, the question of 1st respondent considering the report and the representation of the petitioner would have risen.

44.Therefore,

(i) W.P.No.5787 of 2021 deserves to be allowed. It is accordingly allowed.

(ii) No further orders are required to be passed in W.P.No.9145 of 2020 and W.P.No.5782 of 2021 in view of the order passed in W.P.No.5787 of 2021. Therefore, W.P.No.9145 of 2020 and W.P.No.5782 of 2021 are closed. Accordingly, WP.No.5787 of 2021 is allowed. Consequently, all the miscellaneous petitions are closed in all these writ petitions. No costs.

29.01.2024

Kkd / krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Principal Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs (CCO),
Inquiry Officer,
Chennai IV Commissionerate,
Customs House, 60 Rajaji Salai,
Chennai – 600 001.

C.SARAVANAN, J.

Kkd / krk

W.P.Nos.9145 of 2020, 5782 & 5787 of 2021

29.01.2024