



W.P(MD)No.4416 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.10.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4416 of 2022

and

W.M.P.(MD)No.3727 of 2022

M/s.ACS Shipping & Logistics,
No.5A/179, 2nd Street West,
Caldwell Colony,
Tuticorin – 628 008,
Rep By its Partner,
S.Jayasree.

... Petitioner

Vs.

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the ORDER - IN - ORIGINAL TUT-CUSTM PRV-COM-01/2022(CBS) dated 25.02.2022 in C.No.VIII/13/30/2015-CBS passed by the respondent herein and without following the due procedures of law and the regulations under CBLR, 2018 and in excess



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of the powers conferred with the respondent and in gross violation to the principles of natural justice.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr.R.Gowrishankar,
Standing Counsel.

ORDER

Heard both sides.

2.The writ petitioner is a licensed customs broker. His license was issued by the respondent. The respondent vide order dated 25.02.2022 revoked the writ petitioner's license and also forfeited the security deposit furnished by him. Penalty of Rs.50,000/- was also imposed. Challenging the same, this writ petition has been filed.

3.The reason for issuing such an order was because one exporter by name M/s.J.Tex India had fraudulently availed ineligible IGST refund, drawback and reward by using bogus GST registration. The writ petitioner, as the customs broker of the said exporter, had filed seven shipping bills in their name.

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4.The learned counsel for the writ petitioner assails the impugned order on several grounds. The foremost ground put forth is that the impugned action is time barred. Admittedly, the cause of action had arisen way back in June – September, 2018. The fraud committed by the exporter was noticed by DRI and investigation was taken up. The export had taken place through Mumbai Customs Commissionerate which was duly informed. Vide order dated 18.11.2020, they prohibited the writ petitioner from operating within Mumbai Customs Commissionerate. Copy of the said order was also marked to the respondent. The respondent did not take any action within the statutorily prescribed 90 days. The respondent issued show cause notice only on 14.09.2021 and the impugned order on 25.02.2022. According to the learned counsel for the petitioner, the impugned action of the respondent is hopelessly barred by limitation.

5.The respondent has filed a detailed counter affidavit and the learned standing counsel took me through its contents. Apart from pleading alternative remedy, the learned standing counsel submitted that



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the impugned order was rightly passed and that it is not vitiated by the bar of limitation.

6.I carefully considered the rival contentions and went through the materials on record.

7.The relevant statutory provision is Regulation 17(1) of Customs Brokers Licensing Regulations, 2018. It reads as follows:-

“17.Procedure for revoking licence or imposing penalty:-

(1) The Principal 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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8.Explanation to Regulation 17 is as follows:-

“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.”

9.Regulation 17 sets out the procedure for revoking the license of a customs broker or imposing penalty. It states that the Principal Commissioner of Customs shall issue a notice in writing to the customs broker within a period of 90 days from the date of receipt of an offence report. The period of limitation prescribed in Regulation 17(1) has been held to be mandatory *[vide 2025 (9) TMI 1109 (M/s.Sea Queen Shipping Services Private Limited Vs. The Commissioner of Customs, The Inquiry Officer, Deputy Commissioner of Customs, Chennai)]*.

10.Regulation 17(1) mandates that the authority must initiate action for revocation or imposing penalty within a period of 90 days. This period has to be reckoned from the date of receipt of an offence report. The expression “offence report” was not originally defined. That



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is why, a learned Judge of this Court (Justice V.Ramasubramanian as His Lordship then was) observed in *A.M.Ahamed & Co. Vs. Commissioner of Customs (Imports), Chennai 2014 (309) E.L.T. 433 (Mad)* that the Regulations not only fail to prescribe what an offence report is and how it is to be sent but they do not also prescribe the person competent to send it. This judgment was rendered in the context of 2013 Regulations. 2018 Regulations which superseded 2013 Regulations defines what an offence report is. An offence report need not necessarily have a penal connotation. Any official communication or proceeding or order or notice setting out the misconduct committed by the customs broker in any customs station would qualify to be an offence report. The offence report need not be in any particular format. The only requirement is that the offence report has to emanate from an official source. The offence report must be received by the office of the licensing authority and the limitation period will start running only from the date of its receipt. Even if the licensing authority can be attributed with knowledge in this regard, that would not count for the purpose of limitation. It is the date of receipt of the offence report that is material. Such an interpretation alone would be in consonance with the text of Regulation 17.



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11.Limitation is always a mixed question of fact and law. The writ petitioner in his affidavit had pleaded as follows:-

“16.Further to the same, the respondent had also wrongly held that they were in receipt of the offence report dated 23.07.2022 only during June 2021, which is factually incorrect, for the reason that in the first place, the respondent had not given or placed on record any material evidence to prove that the offence report was received by them only during June 2021 and such documents were not forming part of the impugned SCN and the proof evidencing the same was not given to the petitioner, when such a plea was taken; while also, it can be seen that even the prohibition order dated 18.11.2020 passed by Mumbai Commissionerate, was circulated to the respondent herein and therefore, the action of the respondent in passing the initial order of suspension dated 28.07.2021 and the issuance of SCN dated 14.09.2021 is beyond the period of limitation, which cannot be legally sustained under the CBLR, 2018.

12.The above allegation had not been met by the respondent in his counter affidavit. I, therefore, will apply the rule of non-traverse. The learned counsel for the respondent made a valiant attempt to defend the impugned order by arguing that the prohibitory order dated 18.11.2020 passed by the Mumbai Customs Commissionerate cannot be taken as an



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offence report and that therefore, the limitation period should be reckoned only with effect from 22.06.2021 when the offence report was received.

13.Copy of the prohibitory order issued by the Mumbai Commissionerate on 18.11.2020 has been enclosed in the typed set of papers. It extensively deals with the investigation report dated 22.07.2020. All the relevant particulars including the role of the writ petitioner have been set out therein. It had been specifically observed that the writ petitioner herein did not exercise due diligence in discharging their obligations as required under Regulation 10(n) of the CBLR, 2018. In the light of the interpretation of the expression “offence report” set out earlier, the prohibitory order dated 18.11.2020 issued by the Principal Commissioner of Customs (General), Mumbai Zone – I undoubtedly qualifies to be an offence report.

14.The aforesaid order dated 18.11.2020 reads that copy of the same has been marked to the Commissioner of Customs, Tuticorin. It is well settled that all official acts are presumed to have been done



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regularly. I can therefore safely conclude that the respondent herein received a copy of the said report in normal course. As already mentioned, the prohibitory order was passed on 18.11.2020. It is for the respondent to establish before this Court as to when his office received the copy. This burden lies entirely on the respondent and it cannot be shifted to the writ petitioner. If according to the respondent, the prohibitory order was not received even though it appears to have been marked to the respondent, an affidavit should have been obtained from the office of Principal Commissioner of Customs (General), Mumbai Zone – I that even though the order dated 18.11.2020 contains a note that copy of the same was marked to the respondent, it was actually not done.

15. That apart, the respondent has not pleaded as to what was the offence report received by him which triggered the impugned action. No material has been placed to show that the offence report was received only on 22.06.2022. Thus, the respondent has miserably failed to discharge the obligation cast on him to show that the impugned action was initiated within the period of limitation prescribed by Regulation 17(1) of CBLR, 2018.



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WEB COPY 16.The impugned proceeding is time-barred and I quash the same.

The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
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G.R.SWAMINATHAN, J.

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