IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.75757 of 2023

(Arising out of Order-in-Original No.01/Commr./Cus(Prev.)/BBSR/2022 dated 17.11.2022 passed by Commissioner of Customs (Prev.), Bhubaneswar)

M/s Sri Durga Impex and Logistics
Plot No.225,Prachi Enclave, Niladri Vihar,Chandrasekharpur,Bhubaneswar-751016

Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar I
C.R.Building (GST Bhawan), Rajaswa Vihar, Bhubaneswar-751007

Respondent

APPERANCE :

Dr.S.K.Mahapatra & Mr.Sudipta Ghosh, both Advocates for the appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…77409/2023

DATE OF HEARING : 26 .09.2023
DATE OF DECISION : 26.09.2023

Per R.Muralidhar :

The appellant is a Customs Broker. In the course of their functioning, they are acting as a clearing agent of M/s Laxmi Narayan Enterprises, Delhi. As the goods have been mis-declared, a show-cause notice was issued to the importer and to the present appellant.

2. On 31.08.2022, an offence report has been forwarded to the Principal Commissioner of Customs (Airport & Administration), who granted permission to the Commissioner of Customs, Kolkata, to act against the present appellant for alleged violation of Regulation 10 (d),

10 (m) and 10 (n) of the Customs Broker Licensing Regulation (CBLR), 2018.

2.1 On 07.10.2022, the Principal Commissioner of Customs (Airport & Administration) issued prohibition order against the appellant under Regulation 15 of CBLR,2018.

2.2 On 17.11.2022, the Commissioner (Preventive), Bhubaneswar, suspended the Customs Broker Licence for the appellant.

2.3 On 04.01.2023, the Commissioner (Preventive), Bhubaneswar, confirmed the suspension of CB Licence of the appellant.

2.4 The appellants vide their letters dated 14.06.2023 & 23.06.2023, have requested the Customs Authorities for initiation of proceedings under Regulation 17 of CBLR, 2018, but nothing has been done till now.

2.5 Being aggrieved, the appellant is before the Tribunal.

3. The ld.Counsel for the appellant submits that Rule 17 (1) of CBLR, 2018, mandates that the Principal Commissioner shall issue a notice in writing within 90 days from the date of receipt of the Offence Report. It also mandates that the Customs Broker should submit their reply by 30 days to the Inquiry Officer appointed.

3.1 He further submits that Regulation 17 (5) of CBLR, 2018, stipulates that the Inquiry Officer shall submit his report within 90 days from the date of issue of notice.

3.2 He also submits that Regulation 17 (7) of CBLR, 2018, mandates that the Principal Commissioner shall take his final decision within 90 days from the date of Inquiry Report. In this case, these procedures have not been followed till date.

3.3 To support of the above contentions, the ld.Counsel for the appellant, relies on the decision of the Hon'ble Madras High Court in the case of KTR Logistics Solutions Private Limited Vs. Commissioner of Customs, Chennai reported in 2020 (371) ELT 685 (Mad.),

3.4 Finally, he prays that the present appeal may be allowed.

4. Heard the ld.A.R. for the Revenue, who reiterated the findings of the impugned order.

5. Heard both sides and perused the records.

6. Admittedly, in the present case, we find that the Inquiry Officer has been appointed but no inquiry has been conducted though the Licence was suspended on 17.11.2022, which shows that almost 11 months have been completed without any action being initiated as per the statutory provisions. Regulation 17 (1) is very clear that the proceedings shall be initiated by the Principal Commissioner within 90 days from the date of receipt of the Offence Report. In the case of KTR Logistics Solutions Private Limited (cited supra), the Hon'ble Madras High Court has held as under :

> "***18.*** *In 2017 (348) E.L.T. 640 (Mad), Commissioner of Customs v. MKS Shipping Agencies Pvt. Ltd., the Division Bench of this Court has observed that the Customs House Agents Licensing Regulation is having statutory force and that the 90 days prescribed under Regulation 22(1) is mandatory in nature and cannot be treated as directory.*
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> ***19.…………………………………………………………………***
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> ***20.*** *Likewise, the Delhi High Court in the decisions reported in 2016 (340) E.L.T. 119, Overseas Air Cargo v. CC and*

2016 (337) E.L.T. 41, Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General), has also taken the similar view.

***21.** In W.P. No. 27948 of 2017, it is contended by the Learned Counsel for the Revenue that the Enquiry Report dated 23-5-2018 was made within 88 days from the date of show cause notice. Therefore, it is contended that the time limit is adhered to. On the other hand, it is stated by the Learned Counsel for the petitioner that though the said report was made ready on 23-5-2018, admittedly, it was submitted before the Authority concerned only on 12-6-2018 and therefore, the very submission of the report itself is beyond the period of 90 days. I am in agreement with the submission made by the Learned Counsel for the petitioner in view of the fact that Regulation 20(5) contemplates not only preparing a report of the enquiry and also submitting the same within a period of 90 days from the date of issuance of the show cause notice. Therefore, it cannot be said that preparation was made in time and thus, it satisfies Regulation 20(5).*

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***34.** Considering all the above stated facts and circumstances and by following the decisions made by this Court earlier on the very same issue as discussed supra, this Court is inclined to allow all these writ petitions and set aside the impugned proceedings."*

And in the case of Manjunatha Cargo Private Limited Vs. Commissioner of Customs, Bangalore reported in 2021 (375) ELT 245 (Tri.-Bang.), this Tribunal has held as under :

*"**6.3** As far as time-limit prescribed under Regulation 17(7) is concerned, we find that the Inquiry Report is dated 15-7-2019 and if we accept that the said report was submitted on the same*

date, even then, as per Regulation 17(7) of CBLR, 2018, the Commissioner is supposed to pass the order within 90 days but the Commissioner in this case has passed the order on 20-9-2019 which is beyond the time-limit prescribed under Regulation 17(7) of the CBLR, 2018 and as per the ratio of the various decisions cited supra by the appellant, the time-limit prescribed under CBLR is mandatory and not directory. We therefore hold that the impugned order is liable to be set aside for violation of Regulation 17(7) of CBLR, 2018."

7. The above cited case laws are squarely applicable to the facts and circumstances of the present proceedings. Accordingly, we set aside the confirmation of suspension of CB Licence of the appellant passed by the authorities on 04.01.2023.

8. The appeal is allowed and the Department is directed to allow the normal functioning of the appellant as Customs Broker with immediate effect.

(Operative part of the order was pronounced in the open court)

Sd/
(R.Muralidhar)
Member (Judicial)

Sd/

(Rajeev Tandon)
Member (Technical)

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