CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 42162 of 2016

(Arising out of Order-in-Original No.16/2016, dated 12.08.2016 passed by the Commissioner of Customs, Harbour Estate, Tuticorin 628 004).

Shri M. Jothi Bas **...Appellant**
S/o Shri Mookiah
Partner of M/s Safa Shipping Agency
110 A, South Raja Street
First Floor, Thoothukudi

Versus

Commissioner of Customs **...Respondent**
Custom House
New Harbour Estate
Tuticorin 628 004

APPEARANCE:

For the Appellant :Shri B. Satish Sundar, Advocate for the Appellant
For the Respondent: Shri. N. Satyanarayana, Authorised Representative

CORAM :
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.41094/2026

DATE OF HEARING :05.05.2026
DATE OF DECISION: 14.10.2026

Per AJAYAN T.V.

The appellant, Shri M. Jothi Bas, a partner of M/s. Safa Shipping Agency, Customs Broker, assails Order in Original No. 16/2016 dated 12.08.2016, by which the Commissioner of Customs, Tuticorin has imposed on him a penalty of Rs. 25,000/- under Regulation 22 of the Customs Brokers Licensing Regulations, 2013 (CBLR, 2013).

2. The Customs Broker filed Bill of Entry No. 4951089 dated 20.03.2014 on behalf of M/s. Global Traders, Madurai, for import of Natural Lime Stone Powder in five containers. Acting on

information, officers of the SIIB, Tuticorin examined the entire cargo and found PVC, PVC scrap, PP granules, HDPE and LDPE concealed behind the declared goods in every container. The goods were seized. Investigation was followed by a show cause notice dated 18.09.2014 under the Customs Act, 1962, and by Order in Original No. 65/2015 dated 09.09.2015 the appellant was visited with a penalty of Rs. 1,00,000/- under Section 112(a) of that Act, while his employee was penalised in a sum of Rs. 2,00,000/-.

3. Six months thereafter, on 11.03.2016, the appellant was issued a show cause notice under Regulation 20 of the CBLR, 2013, founded on the facts and evidence that had led to Order No. 65/2015. The notice recorded that the appellant, as Managing Partner, was a Form F holder under Regulation 8 of the CBLR, 2004 holding a power of attorney of the firm, and that Shri S. Selvakumar, its import clerk, was a Form H holder. It alleged contravention of Regulations 11(a), 11(e), 11(m) and 11(n), and failure to supervise the conduct of employees as required by Regulation 17(9). The appellant was called upon to show cause before the Assistant Commissioner of Customs, appointed as Inquiry Officer, why the licence should not be revoked and the security forfeited under Regulation 18 read with Regulation 20, and why penalty should not be imposed under Regulation 22.

4. The Inquiry Officer held the charges under Regulations 11(a), 11(n) and 17(9) proved. Acting on that report, the Commissioner passed the impugned order imposing the penalty aforesaid. Hence this appeal.

5. Shri B. Satish Sundar, learned Advocate for the appellant, contended that the proceedings are without jurisdiction, having been neither commenced nor concluded within the time prescribed by the CBLR, 2013. The Department was aware of the alleged transgressions no later than 18.09.2014, when it issued the show cause notice under the Customs Act. That date, he argued, marks the receipt of the offence report, so that the notice under Regulation 20(1) had to be issued within ninety days, that is to say by December 2014. The notice of 11.03.2016 was therefore hopelessly time barred. Placing reliance on *Santon Shipping*

Services v. Commissioner of Customs, Tuticorin, 2017 SCC OnLine Mad 7084, he urged that the time limits under the Regulations are mandatory, as the jurisdictional High Court has consistently held and this Tribunal has followed.

6. On merits, counsel maintained that the transgressions under Regulations 11 (e) and (m) had been set aside on merits and that the benefit must enure to the appellant; that the misfeasance of an employee acting in his individual capacity for his own gain cannot be visited upon the Customs Broker who discharged his own obligations; that an alleged want of supervision does not by itself attract penal consequences; and that the penalty is in any event disproportionate.

7. Shri N. Satyanarayana, learned Authorised Representative, reiterated the findings in the impugned order.

8. We have heard both sides and perused the record. The question for determination is whether the proceedings under the CBLR, 2013 that culminated in the penalty are barred by limitation. That question, if answered in favour of the appellant, disposes of the appeal, and we therefore take it up first.

9. Regulation 20(1) of the CBLR, 2013 obliges the Commissioner of Customs to issue a written notice to the Customs Broker within ninety days from the date of receipt of an offence report. The notice must state the grounds on which it is proposed to revoke the licence or impose penalty, and must require the Customs Broker to submit a written statement of defence within thirty days to the Deputy or Assistant Commissioner nominated for the purpose.

10. The show cause notice dated 11.03.2016 itself records that information was received on 21.03.2014 and acted upon on 22.03.2014, that an offence case was booked under the Customs Act, and that the notice rests on the facts and evidence which led to Order No. 65/2015 dated 09.09.2015. It is, however, conspicuously silent on the date on which the offence report was received. That date alone determines whether the notice was

issued within the ninety days the Regulation commands, and it was incumbent upon the Commissioner to state it. An authority which invokes a power conditioned by time, yet withholds the date from which time runs, invites the inference that the condition was not met. Be that as it may, the Department was seized of the alleged transgressions when it issued its own show cause notice on 18.09.2014, and beyond any doubt when it adjudicated that notice on 09.09.2015. The notice under Regulation 20(1) came nearly eighteen months after the former date and six months after the latter.

11. The jurisdictional High Court addressed closely similar facts in *Sowparnika Shipping Services v. Commissioner of Customs*, 2017 (352) E.L.T. 286 (Mad.). There, a show cause notice dated 22.09.2014 had been issued to the exporter and to the customs house agent for an attempted export of red sanders misdeclared as Potash Feldspar, and that notice was adjudicated on 29.05.2015. A notice for revocation of the licence under the CBLR, 2013 followed only on 18.10.2016. The Court noticed that in *Masterstroke Freight Forwarders P. Ltd. v. Commissioner of Customs (I), Chennai*, 2016 (332) E.L.T. 300 (Mad.), the ninety day period had been held to be mandatory, and that in *A.M. Ahamed & Co. v. Commissioner of Customs (Imports), Chennai*, 2014 (309) E.L.T. 433 (Mad.), it had been held that the date of knowledge gained by the Commissioner, by means of any communication, be it a show cause notice or an order in original, has to be construed as the date of receipt of the offence report, since otherwise a report could be sent at any time, even after five or ten years. The Court then held as under.

"15. To be noted, in Master Stroke, a learned single Judge of this Court has clearly ruled that the period of 90 days provided for issuance of SCN is mandatory.

. . . . .

18. A perusal of the observations made in A.M. Ahamed & Co. case, is indicative of the fact, that the learned single Judge was of the view that, since, there is no definition of offence report in the Regulations, the period would commence from the date of knowledge gained by the Commissionerate.

19. The Division Bench of the Delhi High Court, both in Impexnet Logistics and Overseas Air Cargo Services, have held that the period of

90 days, provided for issuance of SCN for revocation of Customs Brokers Licence, is sacrosanct.

20. Having regard to the consistent view of Courts across the Board, I am not inclined to take a contrary view.

21. In this case, the facts adumbrated hereinabove would reveal that SCN, with regard to the offence allegedly committed by the petitioner and his principal, was issued on 22-9-2014. The said SCN was adjudicated upon on 29-5-2015. Therefore, even if, I were to take into account the latter date, which is the date when the order-in-original was passed, the impugned SCN issued to the petitioner for revocation of his licence would be way out of time. . . . The impugned SCN dated 18-10-2016, is, consequently, quashed."

12. The ratio of *Sowparnika Shipping Services* applies squarely. Here too the Department had knowledge of the alleged transgressions when it issued its notice of 18.09.2014, and adjudicated that notice on 09.09.2015. Even reckoned from the later date, the notice of 11.03.2016 lies far beyond ninety days. In *Santon Shipping Services*, relied upon by the appellant, the High Court reiterated that once the period of limitation is held to be mandatory, it cannot be disregarded on the ground that the case is otherwise made out on merits. We are constrained to observe that *A.M. Ahamed & Co.* and *Masterstroke Freight Forwarders* had been rendered by the jurisdictional High Court well before the impugned order was passed. The Commissioner was bound by them and ought to have noticed, on the face of his own record, that the notice he was adjudicating was barred. Respectfully following these decisions, we hold that the mandate of Regulation 20(1) was not observed, that the proceedings stand vitiated, and that the penalty imposed cannot survive.

13. In view of this finding, the contentions urged on merits are not being examined, and we express no opinion upon them.

14. The impugned order is set aside and the appeal is allowed, with consequential reliefs, in law, if any.

(Order pronounced in the open court on 14.10.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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