

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

**CUSTOMS APPEAL NO. 51120 OF 2020**

(Arising out of Order-in-Original No. 72/MK/Revocation/Policy/2020 dated 10.09.2020 passed by the Commissioner Customs (Airport & General), New Delhi)

**M/S Online Cargo**

L-273, Street No. 9, Mahipalpur Extn.  
NEW DELHI – 110 073

**...Appellant**

Versus

**Commissioner of Customs**

(AIRPORT & GENERAL)  
NCH, IGI Airport  
New Delhi

**...Respondent**

**APPEARANCE:**

Shri Avneet Singh, Advocate for the Appellant  
Shri Rakesh Kumar, Authorised Representative of the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing: August 19, 2021  
Date of Decision: August 27, 2021**

**Interim Order No. 09/2021**

**JUSTICE DILIP GUPTA:**

M/s Online Cargo<sup>1</sup> has filed this Appeal to assail the order dated 10.09.2020 passed by the Commissioner of Customs (Airport & General)<sup>2</sup>, by which the Customs Broker license of the Appellant valid upto 13.01.2022 has been revoked. The order also forfeits the security deposit and also imposes penalty.

---

1. the Appellant  
2. the Commissioner

2. Shri Avneet Singh, learned Counsel for the Appellant submitted that in view of the provisions of regulation 17(7) of the Customs Broker Licensing Regulations, 2018<sup>3</sup>, the order deserves to be set aside for the sole reason that it was passed after the expiry of ninety days from the date of submission of the report by the Deputy Commissioner of Customs.

3. Shri Rakesh Kumar, learned Authorized Representative appearing for the Department, however, submitted that in view of the provisions of section 6 of The Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020<sup>4</sup> contained in Chapter V relating to "Relaxation of Time Limit under Certain Indirect Tax Laws", the time period provided under regulation 17(7) stands extended upto 30.09.2020.

4. It is only on this limited issue that the matter was heard and order was reserved.

5. The 2018 Regulations have been framed by the Central Board of Indirect Taxes and Customs in exercise of the powers conferred upon it by sub-section (2) of Section 146 of the Customs Act, 1962<sup>5</sup>. Regulation 17 deals with 'Procedure for revoking license or imposing penalty'. Under regulation 17, the Deputy Commissioner of Customs or Assistant Commissioner of Customs is required to inquire into the grounds which are not admitted by the Customs Broker pursuant to the notice issued by the Principal Commissioner or Commissioner of Customs to the

---

**3. 2018 Regulations**  
**4. 2020 Act**  
**5. the Customs Act**

Customs Broker requiring him to submit a written statement of defence. After the conclusion of the inquiry, the Deputy Commissioner of Customs or the Assistant Commissioner of Customs has to prepare a report of the inquiry after recording his findings and has to submit the same to the Principal Commissioner or Commissioner of Customs. Regulation 17(7) provides that the Principal Commissioner or Commissioner of Customs has to pass an order either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs. The said Regulation 17(7) is reproduced below :

“(7) The Principal Commissioner or 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 license of the Customs Broker 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):

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.”

6. In the present case, it has been pointed out by the learned Counsel for the appellant, which fact is not disputed by the learned Authorized Representative of the Department, that the Deputy Commissioner of Customs had submitted the report on 08.06.2020 and the order was passed by the Principal Commissioner on 10.09.2020. Thus, it is not in dispute that the

order was passed by the Principal Commissioner of Customs after the expiry of ninety days from the date of submission of the report by the Deputy Commissioner of Customs.

7. Learned Counsel for the Appellant submitted that since the time period prescribed under Regulations 17(7) of the 2018 Regulations is mandatory in nature, the order dated 10.09.2020 revoking the Customs Broker License of the Appellant deserves to be set aside for this reason alone.

8. Shri Rakesh Kumar, learned Authorized Representative appearing for the Department has, however, placed reliance upon section 6 of the 2020 Act and has contended that since the period of ninety days prescribed in regulation 17(7) of the 2008 Regulations falls within the period commencing 20.03.2020 upto 29.09.2020, it would stand extended upto 30.09.2020 and so the order dated 10.09.2020 passed by the Commissioner of Customs cannot be set aside only on the ground that it was not passed within ninety days from the date of submission of the report by the Deputy Commissioner of Customs.

9. In order to appreciate this submission made by the learned Authorized Representative of the Department, it would be useful to reproduce the provisions of section 6 of the 2020 Act.

#### **"CHAPTER V**

#### **RELAXATION OF TIME LIMIT UNDER CERTAIN INDIRECT TAX LAWS**

**6. Notwithstanding anything contained** in the Central Excise Act, 1944, **the Customs Act, 1962** (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994, as it stood prior to its

omission vide section 173 of the Central Goods and Services Tax Act, 2017 with effect from the 1st day of July, 2017, **the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of September, 2020** or such other date after the 29th day of September, 2020 as the Central Government may, by notification, specify, **for the completion or compliance of such action as—**

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

**shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of September, 2020** or such other date after 30th day of September, 2020 as the Central Government may, by notification, specify in this behalf:”

**(emphasis supplied)**

10. The 2018 Regulations have been framed under section (2) of section 146 of the Customs Act. Section 146 of the Customs Act is reproduced below :

“**146.** Licence for customs brokers —

(1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for—

(a) the authority by which a licence may be granted under this section and the period of validity of such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as a customs broker;

(d) the manner of conducting the examination;

(e) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

(f) the circumstances in which a licence may be suspended or revoked; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeal may be filed.”

11. It is clear from the aforesaid provisions of section 146 of the Customs Act that no person shall carry on business as a Customs Broker unless such person holds a licence granted in this behalf in accordance with the regulations. Sub-section (2) of section 146 provides that the Board may make regulations for the purpose of carrying out the provisions of section 146 and, in particular, such regulations may provide for, amongst others, the circumstances in which a licence may be suspended or revoked.

12. Section 6 of the 2020 Act provides that notwithstanding anything contained in the Customs Act, 1962, the time limit specified in, or prescribed or notified under, the said Act, which falls during the period from 20.03.2020 to 29.09.2020 for the completion of any proceeding or issuance of any order by any authority shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to 30.09.2020.

13. Shri Avneet Singh, learned counsel appearing for the appellant submitted that the time limit prescribed under regulation 17(7) of the 2018 Regulations Act has not been extended by section 6 of the 2020 Act and in support of this contention placed reliance upon the following decision:

- (i) M/s. Masterstroke Freight Forwarders Pvt. Limited vs. The Commissioner of Customs (imports) Customs House, No. 60, Rajaji Salai, Chennai-i<sup>6</sup>;**
- (ii) M/s. Jayyemaarr vs. The Commissioner of Customs, Chennai Others<sup>7</sup>;**
- (iii) S. Kasi vs. State Through the Inspection of Police Samaynallur police station Madurai district<sup>8</sup>;**  
and
- (iv) Settu S/o Govindaraj vs. The State<sup>9</sup>.**

14. In the present case what is required to be examined is whether because of the provisions of section 6 of the 2020 Act relating to 'Relaxation of the Time Limit under certain Indirect Tax Laws', the time period stipulated under regulation 17(7) of the 2018 Regulations for passing an order within ninety days from the date of submissions of report by the Deputy Commissioner of Customs, stands extended upto 30.09.2020.

15. A perusal of section 6 of the 2020 Act makes it clear that the time limit specified in, or prescribed or notified **under** the Customs Act falling between 20.03.2020 to 29.09.2020 for issuance of any order by any authority shall stand extended upto

---

6. **W.P. No. 3374 of 2015 decided by the Madras High Court on 27.10.2015**  
7. **W.P. 26939 of 2015 decided by the Madras High Court**  
8. **decided by the Supreme Court on 19.06.2020**  
9. **decided by the Madras High Court on 08.05.2020**

30.09.2020. It is no doubt true that the Customs Act does not prescribe time limit for completion of any proceeding or issuance of any order, but time limit has been prescribed under the 2018 Regulations notified **under** the Customs Act.

16. 'Under the Act' has been explained in 'The Law Lexicon' (Third Edition 2012) as follows:

"The words 'under the Act' mean what is not directly found in the statute but is conferred or imposed by virtue of the rules or bye-laws framed by a subordinate law making authority which is empowered by the parent Act."

17. Such being the meaning assigned to "under the Act", there is no manner of doubt that section 6 of the 2020 Act would also extend the time limit for an **order** to be passed under the Regulations framed under the Act. Thus, the time limit of ninety days prescribed in regulation 17(7) of the 2018 Regulations for issuance of the order within ninety days from the date of submission of the report by the Deputy Commissioner of Customs shall stand extended upto 30.09.2020.

18. In **Masterstroke Freight**, which decision of the Madras High Court has been relied upon by the learned counsel for the appellant, the High Court held that it is only under the Regulations framed under sub section (2) of section 146 of the Customs Act that the licence is granted and that the Regulations contemplate action against the Customs Broker dehors the provisions of the Customs Act. Paragraph 46 of the judgment, on which reliance has been placed by learned counsel for the appellant, is reproduced below:



“46. The Customs Broker Licensing Regulations, 2013 were promulgated in exercise of powers conferred under Sub-Section (2) of Section 146 of the Customs Act, 1962. It is only under the regulations, the licence is granted and the regulations also contain various provisions to regulate the affairs of the customs broker including the revocation of the licence. The Regulations contemplates action against the customs broker de hors the provisions under the Customs Act. Therefore, the regulations cannot be treated as sub-ordinate legislation. Moreover, every implementing authority of any fiscal statute is only performing a public duty. Therefore, it cannot be said that the provision is to be termed as “directory” just because its adherence is in the nature of performance of a public duty. What is to be considered is the object of the enactment in prescribing a period for the performance of such public duty.”

19. This decision does not advance the submission made by the learned counsel for the appellant.

20. In **Jeyyemaarr**, the issue that arose for consideration was whether the period of ninety days for issuance of a notice under regulation 20 of the 2013 Regulations was mandatory in nature. The Madras High Court in paragraph 24 of the judgment reproduced the observations made in **Masterstroke Freight**.

21. In **S. Kasi**, the Supreme Court examined whether the order dated 23.03.2020 passed by the Supreme Court in Suo Moto W.P. (C) No. 3 of 2020 would enlarge the time period for filing a charge sheet under section 167 (2) of the Code of Criminal Procedure. The Supreme Court did not examine the provisions of section 6 of the 2020 Act. The order dated 23.03.2020 passed by the Supreme Court is as follows:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the

country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

22. It is seen that section 6 of the 2020 Act is differently worded and infact seeks to relax the time limit specified under certain Indirect Tax. This decision, therefore, will not help the appellant.

23. In **Settu**, the Madras High Court also examined whether the order dated 23.03.2020 passed by the Supreme Court would extend the time limit prescribed for filing the charge sheet under section 167(2) of the Code of Criminal Procedure. This decision would also, therefore, not help the appellant.

24. It is, therefore, not possible to accept the contention advanced by learned counsel for the appellant that in view of the provisions of regulation 17(7) of the 2018 Regulations, the order dated 10.09.2020 passed by the Commissioner should be set aside merely for the reason that it was passed after the period of

ninety days from the date of submission of the report by the Deputy Commissioner of Customs. This is for the reason that in view of the provisions of section 6 of the 2020 Act, the period prescribed under regulation 17(7) of the 2018 Regulations stands extended upto 30.09.2020.

25. The appeal may now be listed for hearing on **14.09.2021**.

(Pronounced in the open Court on **27.08.2021**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

**CUSTOMS APPEAL NO. 51120 OF 2020**

(Arising out of Order-in-Original No. 72/MK/Revocation/Policy/2020 dated 10.09.2020 passed by the Commissioner Customs (Airport & General), New Delhi)

**M/S Online Cargo**

L-273, Street No. 9, Mahipalpur Extn.  
NEW DELHI – 110 073

**...Appellant**

Versus

**Commissioner of Customs**

(AIRPORT & GENERAL)  
NCH, IGI Airport  
New Delhi

**...Respondent**

**APPEARANCE:**

Shri Avneet Singh, Advocate for the Appellant  
Shri Rakesh Kumar, Authorised Representative of the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

**Date of hearing: August 19, 2021  
Date of decision: August 27, 2021**

**ORDER**

Order pronounced

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(C.J.MATHEW)  
MEMBER (TECHNICAL)**