

**M/s ADEPT LOGISTICS
THROUGH ITS PROPRIETOR YOGESH PANDEY 227/1, 2ND FLOOR
ADMN. BUILDING, CONCOR, ICD TUGHLAKABAD
NEW DELHI-110020**

Vs

**COMMISSIONER OF CUSTOMS (AIRPORT & GENERAL)
IGI AIRPORT, NEW DELHI**

Appellant Rep by: Shri M S Arora, Adv.

Respondent Rep by: Shri Rakesh Kumar & Sunil Kumar, AR (DRs)

CORAM: C L Mahar, Member (T)
Rachna Gupta, Member (J)

Cus - The assessee is the holder of Customs Broker License - On examination, department observed that Bill of lading dated 31.08.2017 was actually of 06.09.2017 - The licence of assessee was suspended which was later confirmed vide O-I-O - It is thereafter that a SCN was served upon assessee alleging the failure of custom broker to comply with Regulations 11(d), 11(g) and 79 of CBLR, 2013 - The incidence report was received by Commissioner on 27/10/2017 - The SCN bears 17/01/2018 as the date - As per the department, SCN of 17/01/2018 was dispatched on 17/01/2018 itself whereas as per assessee, it was put to Speed Post on 01/04/2018 that is after the expiry of period of 90 days - Irrespective the Speed Post receipt has a date of 01/02/2018, the impugned notice shall be deemed to have been issued by Commissioner if after signing the same, he has put it in the process of dispatch in such a way that it was out of its control on such date which falls within the stipulated period of limitation, such SCN cannot be held to be barred by limitation - With respect to the merits of the case, the adjudicating authority below has relied upon the statement of proprietor of assessee itself which is duly corroborated by an employee of assessee - There is no retraction to the said statements - The alleged forgery i.e. the change in date of Bill of lading also stands confirmed from EDI system and also from shipping line OOCL - Otherwise also the notification for making BIS certificate mandatory is of 01/09/2017 - The alleged forgery is the change in date from 06/09/2017 to 31/08/2017 which again corroborates the statement of Yogesh Kumar Pandey, proprietor of assessee as has been relied upon by the authority - No infirmity found in the impugned order: CESTAT

Appeal dismissed

Case laws cited:

Kanubhai M Patel HUF vs Hiren Bhatt OR His Successors to Office - 2010-TIOL-531-HC-AHM-IT... Para 13

R. Vishwanatha Pillai vs. State of Kerala & Ors. Pillai vs State of Kerala and other 2004 (2) SCC 105... Para 20

FINAL ORDER NO. 51161/2019

Per: Rachna Gupta:

The Appellant in the present case is the holder of Customs Broker License, as was issued under Customs Brokers Licensing Regulations (CBLR), 2013 on 31 March 2016 and is valid upto 18.12.2025. The Appellant had filed three bills of entry under the aforesaid license for clearance of toys imported from China. The details whereof are follows :

S. No.	Name of the Importer	Bill of Entry No. & Date	Bill of lading No. & Date
1.	M/s Goyal Enterprises (IEC No. 0510100376)	3413939 dated 27.09.2017	OOLU2592985508 dated 31.08.2017
2.	M/s Mahadev Enterprises (IEC No. BPVPG0667J)	3413748 dated 27.09.2017	OOLU2592985500 dated 31.08.2017
3.	M/s Mahadev Enterprises (IEC No. BPVPG0667J)	3413598 dated 27.09.2017	OOLU2592985509 dated 31.08.2017

2. On examination, department observed that Bill of lading dated 31.08.2017 was actually of 06.09.2017 (as per EDI system) and 06.09.2017 date also got confirmed from shipping line OOCL. Opining the change of date as forgery that the proprietor of the Appellant CB, namely, Shri Yogesh Kumar Pandey was interrogated where he acknowledged the aforesaid change about the date of Bill of lading to have been done with the intention to avoid requirement of BIC certificate made applicable from 01.09.2017 by of DGFT notification no. 26/2017 dated 1st September, 2017. Statement of an employee of Appellant, namely, Shri Praveen Kumar was also got recorded on 17.10.2017 itself acknowledging the aforesaid intention. It is thereafter that the incident report of Deputy Commissioner SIIB Import, ICD, Tughlakabad, New Delhi was forwarded alleging the noticed forgery in the Bill of lading and proposing an action under Regulation 18 read with Regulation 20 and 22 of the CBLR, 2013, including revocation of licence, forfeiture, security and imposition of penalty. The licence of the Appellant was suspended by the Commissioner of Customs (General), New Custom House, New Delhi vide Order no. 67 dated 27/10/201/30/10/2017, in view of Regulation 19(1) of CBLR, 2013 which was later confirmed vide Order-in-Original No. 74 dated 17/11/2017 passed by Commissioner of Customs (General), New Delhi. It is thereafter that a show cause notice No. 02 dated 17/01/2018 was served upon the Appellant alleging the failure of custom broker to comply with Regulations 11(d), 11(g) and 79 of CBLR, 2013.

3. The said proposal has been confirmed vide the Order-in-Original No. 34 dated 06/07/2018 being aggrieved whereof the Appellant is before this Tribunal.

4. We have heard Shri M. S. Arora, learned Advocate for the Appellant, Shri Rakesh Kumar and Sunil Kumar, Authorised Representatives for the Department.

5. It is submitted on behalf of the Appellant that order is liable to be set aside on the sole ground of limitation as the show cause notice as envisaged under Regulation 20(1) of CBLR, 2013 was not issued within 90 days of receipt of the offence report. It is impressed upon that though the show cause notice was signed on 17/01/2018 but was dispatched on 01/02/2018 and was received by the Appellant on 07/02/2018 as such was issued beyond the stipulated time of 90 days. It is impressed upon that the order is liable to be set aside on this ground itself without even looking into the merits of the case. The order is accordingly prayed to be set aside and appeal is prayed to be allowed.

6. Learned D.R on the other hand has submitted that the appellant was observed to have forged the documents so as to circumvent the provisions of Foreign Trade Policy in respect of import of toys. Since the impugned order has held that Appellant/CB has contravened provisions of the CBLR, 2013, hence, have rendered themselves liable for revocation of licence, there is no infirmity in the order. The plea of limitation as taken by the Appellant has also been vehemently denied with the submissions that the offence report is admittedly dated 27/10/2017, 90 days

whereof for issuing a show cause notice expired on 25/01/2018. The show cause notice was issued on 17/01/2018, hence was issued within the said period of 90 days. The argument of the Appellant that the same was posted on 01/02/2018 is being denied. The learned Departmental Representative has relied upon the extract of the dispatch register maintained in regular course of business by the department showing that the show cause notice to Appellant was dispatched on 17/01/2018 itself.

7. It is also impressed upon that the word "Issue" used in Regulation 21 of CBLR, 2013 does not mean "served". Justifying upon the order, learned Departmental Representative has prayed for the dismissal of the appeal.

8. After hearing both the Parties, we observe as follows :

The only line of argument on behalf of Appellant to set aside the impugned order is the ground of limitation that the impugned show cause notice is not issued by Commissioner of Customs within 90 days of the date of the receipt offence report as it was put in post after the expiry of 90 days irrespective it was signed by the issuing authorities during the period of limitation itself.

9. In view thereof, we confined our findings to the issue of limitation. For the purpose Regulation 20 (1) CBLR 2013 is perused. It reads as follows :

20. Procedure for revoking licence or imposing penalty:

(1) The 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 licence 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 Date of Order 06-02-2018 W.P.No.15866/2016 M/s. Cargomar Vs. Union of India & Anr. = 2018-TIOL-332-HC-KAR-CUS person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

10. Admittedly, the incidence report was received by the Commissioner of Customs on 27/10/2017. Admittedly, show cause notice bears 17/01/2018 as the date, period of 90 days as required in the above provision expires on 27/01/2018. As per the department the show cause notice of 17/01/2018 was dispatched on 17/01/2018 itself whereas as per Appellant it was put to Speed Post on 01/04/2018 that is after the expiry of the said period of 90 days.

11. It is now to be adjudicated as to whether in view the aforementioned admitted as well as the disputed facts, the impugned show cause notice stands issued within the period of 90 days or not. Accordingly, the core issue that arises for consideration is as to when can the notice under Regulation 20 (1) of CBLR, 2013 is said to have been issued.

12. In this context, it would be necessary to examine the true import of the expression "shall issue" as employed in the said Regulation.

(15.1) In P. Ramanathan Aiyer's Law Lexicon the word "issue" has been defined as follows:

"Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit; egress or passage out (Worcester Dict.); the ultimate result or end. As a verb, "To issue" means to send out, to send out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively: to put into circulation; to emit; to go out (Burrill); to go

forth as a authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)

Issue of Process. Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer's hands for service, at the time it becomes a perfected process.

13. In the case of *Kanubhai M Patel HUF vs Hiren Bhatt OR His Successors to Office & 4 in SCA Nos. 5295 to 5297, decided on 13.07.2010 = 2010-TIOL-531-HC-AHM-IT*, the word "shall be issued" as used in Section 149 of the Income Tax Act were defined as follows:

"Any process may be considered "issued" if made out and placed in the hands of a person authorised to serve it, and with a bona fide intent to have it served."

16. *"Thus, the expression to issue in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03. 2010 whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices cannot be equated with issuance of notice as contemplated under section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer."*

14. Thus, any notice is set to be issued when it is put in proper form and placed in the hands of a person authorised to serve it and with the bonafide intent to have it served.

15. In the present case, there is no dispute that the show cause notice was signed by Commissioner on 17/01/2018 i.e before the expiry of period of 90 days from the date of receipt of inquest report. No doubt, considering the above definition of word "issue" mere signing of notice cannot be equated with issuance of notice. As contemplated in the impugned regulation, the date relevant for issue would be the date on which the notice was handed over for service to the proper officer.

16. In the present case, the Appellant's submission is thereof the show cause notice of 17/01/2018 was received by them on 07/02/2018 after having been dispatched on 01/02/2018, the receipt of Speed Post is impressed upon as the evidence.

17. We are of the opinion that irrespective the Speed Post receipt has a date of 01/02/2018. The impugned notice shall be deemed to have been issued by the Commissioner Customs if after signing the same he has put it in the process of dispatch in such a way that it was out of its control on such date which falls within the stipulated period of limitation, such SCN cannot be held to be barred by limitation.

18. We observe that department has placed on record the copy of dispatch register maintained by the office of the Commissioner Customs in their regular course of business. Perusal thereof shows that the show cause notice of 17/01/2018 was dispatched for being put in process of post on 17/01/2018 itself. Once the notice was sent out of the office of issuing authority, it was definitely out of the control of the said authority. Hence, the obligation of said authority for issuing the same stands discharged with the said dispatch.

19. In view of these observations, the case law as relied upon by the Appellant is held not applicable to the given facts and circumstances because in the present case it was on 17/01/2018 when Commissioner ceased to have any authority to alter/modify/re-sign or whatever the said show cause notice i.e. on 17/01/2018 itself, Commissioner ceased to have

any locus paetentiae. Date of dispatch from the domain of Commissioner is held to be the date of issue of notice. The said date, therefore, is 17/01/2018. Since the same is within the period of 90 days of receipt of inquest report by the Commissioner, the impugned show cause notice cannot be held to be barred by limitations.

20. The fact that date of service of the show cause notice upon the Appellant that is 07/02/2018 is absolutely not relevant for the impugned controversy, as the same is confined to issuance of notice. Event of issuance has to precede the event of service of notice. Hence the service of notice cannot be covered under the word "shall issue".

21. In view of the entire above discussion, we are not convinced with the arguments put forth on behalf of Appellant about the impugned show cause notice to have been barred by in time.

22. We draw our support from the decision of Hon'ble High court of Gujarat at Ahmedabad in the case of Kanubhai M. Patel HUF (Supra) wherein issuance of notice is though held to be different from signing of notice but has no-where been equated to the service there.

23. As a result of entire above discussion, we don't find any infirmity in the order under challenge as far as the aspect of limitation is concerded.

24. With respect to the merits of the case though learned Counsel for the Appellant not impressed thereupon, however, from the perusal of record, it is observed that the Appellant has been found to have forged the import documents so as to avoid the mandatory requirement of BIS certificate .The adjudicating authority below has relied upon the statement of proprietor of Appellant itself which is duly corroborated by an employee of the Appellant company. There is no retraction to the said statements. The alleged forgery i.e. the change in date of Bill of lading also stands confirmed from EDI system and also from shipping line OOCL. Otherwise also the notification for making BIS certificate mandatory is of 01/09/2017. The alleged forgery is the change in date from 06/09/2017 to 31/08/2017 which again corroborates the statement of Yogesh Kumar Pandey, proprietor of the Appellant as has been relied upon by the authority. Seen from that angle also, we do not find any infirmity in the order. Finally, relying upon the decision of Hon'ble Supreme court in the case of *R. Vishwanatha Pillai vs. State of Kerala & Ors. Pillai vs State of Kerala and other reported in 2004 (2) SCC 105*, the following findings;

"We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquires a status by practising fraud".

25. We hereby uphold the order under challenge. As a result thereof the appeal stands dismissed.