IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. IV

Customs Appeal No. 50490 of 2019 [DB]

Arising out of Order-in-Original No. 07/MK/Policy/2019, Dated: 04.02.2019
Passed by the Commissioner of Customs (Airport and General), New Delhi

Date of Hearing: 11.04.2019
Date of Decision: 26.04.2019

M/s RP CARGO HANDLING SERVICES
THROUGH ITS PROPRIETOR, MR RAJAT PRABHAKAR
A-8/C, 2ND FLOOR ROOM NO 12, VISHWAKARAM COLONY
M B ROAD, NEW DELHI - 110044

Vs

COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL)
NEW CUSTOM HOUSE NEAR IGI AIRPORT
NEW DELHI - 110037

Appellant Rep by: Shri Priyadarshi Manish, Adv.
Respondent Rep by: Shri Sunil Kumar, AR

CORAM: Ashok Jindal, Member (J)
C L Mahar, Member (T)

Cus - Assessee is in appeal against impugned order wherein the Custom Broking License has been revoked by Commissioner of Customs - On going through the Regulation 20 of CBLR, 2013, the Commissioner of Customs shall issue a notice in writing to the Custom Broker within 90 days from the date of receipt of an offence report which means that the Commissioner of Customs is required to issue notice in writing to the Custom Broker which does not mean that if he has issued the notice and kept it in his file, so, he has complied with the provisions of Regulation 20 of CBLR, 2013 - In fact, it is to be issued to the Custom Broker which means it should be received by Custom Broker - Therefore, the notice was required to be received by Custom Broker within 90 days of the receipt of the offence report - Admittedly, as per the impugned order itself, the notice was received by Custom Broker only on 28 August, 2018 which is the period beyond the 90 days prescribed in the said Regulation - Therefore, the SCN issued to the Custom Broker is barred by limitation - Consequently, the impugned order is not sustainable in the eyes of law: CESTAT

Appeal allowed

Case laws cited:

Commissioner of Wealth Tax, U.P. and another Vs. Kundan Lal Behari Lal - 2002-TIOL-1237-SC-WT... Para 4

Municipal Corporation of Delhi Vs. Dharma Properties Private Limited (2018) 11 Supreme Court Cases 230... Para 4

Purushottam Jajodia Vs. Dir. Of Revenue Intelligence, New Delhi - 2014-TIOL-1303-HC-DEL-CUS... Para 5

Collector of Central Excise Vs. M.M. Rubber Company - 2002-TIOL-111-SC-CX... Para 7

FINAL ORDER NO. 50592/2019

Per: Ashok Jindal:

M/s RP Cargo Handling Services is in Appeal against the impugned order wherein the Custom Broking License has been revoked by the Commissioner of Customs (Airport & General).

2. The facts of the case are that on the basis of investigation report received from Directorate of Revenue Intelligence, New Delhi dated 10 May, 2018 in the office of the Commissioner on 18 May, 2018 in respect of the appellant that Shri Ramesh Wadhera and Shri Sanjeev Maggu were engaged in evasion of custom duty by way of diverting the goods stored in Custom Bonded Warehouse into domestic market without payment of custom duty. It was further revealed that documents were forged/fabricated to show re-export of warehoused goods. For this purpose, Shri Ramesh Wadhera and Shri Sanjeev Maggu created fictitious firms and obtained IEC in their names. On the basis of the offence report received in the office of the Commissioner on 18 May,2018, a show cause notice dated 10 August, 2018 was issued to the appellant through speed post on 14 August, 2018 and was received back in their office with remarks of the postal authorities that 'bar bar jane par band milta hai'. Thereafter, the same was served by hand on 28 August, 2018 and after the report received from the investigating officer, the charges framed in the notice were confirmed. Consequently, the licence was revoked. Against the said Order, the appellant is before us.

3. This matter was initially heard on 10 April, 2019. As learned Counsel of the appellant took an objection that show cause notice issued to them is barred by limitation. Therefore, the proceedings under Customs Brokers Licensing Regulations (CBLR) are not maintainable. At this juncture both sides sought time to produce judicial pronouncements in their favour. Therefore, the matter was adjourned for 11 April, 2019, i.e. today.

4. When the matter was called for hearing on 11 April, 2019, the learned Counsel for the appellant drew the attention to the Advance Law Lexicon Dictionary to show the word 'issued' and 'served'. He further submits that a similar issue came up before the Hon'ble Apex Court in the case of *Commissioner of Wealth Tax, U.P. and another Vs. Kundan Lal Behari Lal (1975) 4 Supreme Court Cases 844* = ***2002-TIOL-1237-SC-WT*** to show that "issued" means "it is to be served". Further, he drew our attention to the decision of the Apex Court in the *Municipal Corporation of Delhi Vs. Dharma Properties Private Limited (2018) 11 Supreme Court Cases 230* and prayed that in terms of Regulation 20 of Custom Brokers Licensing Regulation, 2013, the Commissioner of Customs is required to issue a notice in writing to the Custom Broker within a period of 90 days from the date of receipt of an offence report. It is his submission that as per the impugned order the offence report has been received on 18 May, 2018. Therefore, the notice was required to be served by the learned Commissioner to the appellant till 16 August, 2018 whereas as per the impugned order, the same has been served on 28.08.2018. Therefore, the same is barred by limitation. Accordingly, the impugned order is to be set aside.

5. Shri Sunil Kumar, learned Authorised Representative appeared on behalf of the Revenue who submits that as per Regulation 20 of Customs Brokers Licensing Regulation, 2013, the Commissioner is required to issue the notice in writing within 90 days from the date of receipt of an offence report. Admittedly, the notice has been handed over to postal authorities on 14 August, 2018. Therefore, the same has been issued in time. To support his contentions, he relied on the decision of the Hon'ble High Court of Delhi in the case of *Purushottam Jajodia Vs. Dir. Of Revenue Intelligence, New Delhi 2014 (307) E.L.T. 837 (Del.)* =***2014-TIOL-1303-HC-DEL-CUS*** .

6. At this juncture, Shri Amresh Jain, learned Authorised Representative intervened and submits that the Section 153 of Customs Act, 1962 prescribes the procedure for service of any notice issued under the Customs Act, 1962 and as per the said provision any

Order/decision/notice issued under this Act shall be served. He further, submits that any notice issued under the Act has to be served subsequently and issuance of notice is condition precedent to serving of notice. Therefore, no notice can be served without issuance of the same by the concerned competent authority. The event of issuance has to be preceded the event of service of notice. He also submits that the decision in the case of Delhi Municipal Corporation Act and Wealth Tax Act are not applicable to the facts of this case. When it was asked from Shri Amresh Jain with regard to his reliance in the case of Purushottam Jajodia (supra) he failed to answer.

7. Further, Shri Sunil Kumar started further arguing the matter and placed reliance on the decision in the case of Purushottam Jajodia (supra) and also relied upon the decision of the Hon'ble Supreme Court in the case of *Collector of Central Excise Vs. M.M. Rubber Company 1991 (55) E.L.T. 289 (S.C.)* = ***2002-TIOL-111-SC-CX*** . Thereafter, the learned Authorised Representative submits that they want to file a written submission. Therefore, they need time to file the same.

8. As requested by the learned Authorised Representative, the time was granted and written submissions were received on 12 April, 2019. The same are taken on record and extracted here below:

During hearing of the appeal on 10.04.2019 and 11.04.2019, arguments on behalf of both the parties were advanced only on the issue of limitation. In order to buttress the case of revenue, following submissions are placed before the Hon'ble Bench for kind consideration.

Issuance, Service and Reciept of Notice under Custom Act 1962.

Section 153 of Customs Act prescribes the procedure for service of any Notice issued under Customs Act 1962. Section 153 of Customs Act is as follows:-

153. "Service of Order, Decision, etc.

Any order or decision passed or any summons or notice issued under this Act shall be served.-

(a) By tendering the order, decision summons or notice or sending it by[registered post or by such courier as may be approved by the [principal Commissioner of Customs or Commissioner of Customs]]; or

(b) If the Order, Decision, Summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."
The above Section clearly shows that any notice issued under Act has to be served subsequently. The issuance of Notice is condition precedent to the service of notice. In other words, no Notice can be served without issuance of same by the concerned Competent Authority. The Event of issuance has to precede the Event of service of notice.

Above is a procedure prescribed under Customs Act 1962 and may not be pari materia to the procedures prescribed in other Acts. A particular Act passed by Parliament is an independent Act with respect to the procedure prescribed therein. Further the General Clauses Act also gets applied only when the procedure is not specified in that particular Act.

The ratio laid down by the Hon'ble Supreme Court in the two judgments relied upon by the Appellant is only with respect to the procedure prescribed in those very Acts viz.

(i) Delhi Municipal Corporation Act 1957

(ii) Wealth Tax Act 1957
Section 126(2) of the Delhi Municipal Corporation Act 1957 is reproduced as follows:-

126 (2). - Before making any amendment under sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objection which may be made by such person.

The question before Hon'ble Supreme Court while dealing with the Section 126(2) was to interpret the word "Give" featuring in those very provisions. The Hon'ble Supreme Court has interpreted the same in Para 14 of its judgment. The Hon'ble Supreme Court was not dealing with the procedure of the Issuance and the Service prescribed in other Acts.

Hon'ble Supreme Court in the case of Commissioner Wealth Tax, U.P and another Vs. Kundan Lal, Bihari Lal [(1975) 4 SCC 844] = ***2002-TIOL-1237-SC-WT*** *was dealing only with the singular word "Issued" featuring in Section 18(2A) of the Wealth Tax Act. Again in this judgment the Supreme Court was not dealing with both the words "issued" and "served" featuring in the similar provisions of any other Act.*

However, as illustrated above, Section 153 of Customs Act uses both the words "Issued" and "Served", in succession in the same line. It has also been mentioned above that the Event of issuance and the Event of service are mutually exclusive events and cannot be equated as one. If they are presumed to connote one the same thing, then the whole proviso of 153 becomes otiose.

Further, it may be clarified that the Event of Issuance gets completed the moment Notices is issued by the Competent Authority pending its service. The Event of Service starts only when the notice after issuance is either tendered or sent by registered post as prescribed under the Customs Act.

The two events can in no situation occur at one and the same time. There is a procedure of issuance under different Sections as 28, 146 etc of Custom Act and there is a separate procedure for service under Section 153 of Customs Act.

In the light of above it is submitted that the issuance of any notice, whether under Section 28 of Customs Act or under Section 146 of Customs Act has to be served only as per the procedure prescribed under the Section 153 of Customs Act. There can't be service by any method other than one prescribed under Section 153 of Customs Act. In other words, Section 153 is a comprehensive Section which deals with Event of Service of any Order, Decisions, Summon or Notices which gets issued under any provision of the Customs Act.

In view of above it is prayed that the Impugned Order may be upheld on the issue of limitation.
9. On hearing both the sides, we find that the short issue involved in the matter is that in terms of Regulation 20 of Customs Broker Licensing Regulation, 2013 whether notice issued by Commissioner of Customs in writing to the Custom Broker within 90 days from the date of receipt of an offence report is required to be served within 90 days or not?

10. After hearing the learned Authorised Representatives, we find that in this case, the arguments are required to be heard with regard to the procedure of serving notice on the Custom Broker in terms of Regulation 20 of Custom Broking Licensing Regulation, 2013 whereas learned Authorised Representative, Shri Amresh Jain has not argued with regard to the provisions 20 of Custom Broker Licensing Regulation, 2013 and discussed the procedure under Section 153 of Customs Act, 1962 for service of the Order/summon/notice which means that without knowing the facts of the case he started arguing the matter. Such type of a situation are required to be avoided. In fact, an Authorised Representative (who does not know the facts of the case or have not gone through the records) should avoid arguing the matter which may become fatal at any stage.In this case also, Shri Amresh Jain argued contrary to the arguments of Shri Sunil Kumar.

11. We take notice of the facts that the learned Counsel for the appellant has placed before us the dictionary meaning of the word 'issued'.

12. As per Advanced Law Lexicon Dictionary same is reproduced here as under:

""Issued" and "served" The expressions "issued" and "served" are used in interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. Accordingly, it was held that the word "issued" was not used in the narrow sense of "sent" but that the said expression had received, before the Indian Income tax (Amendment) Act, 1959, a clear judicial interpretation. SUBBA RAO J., as he then was dealing with the purpose which the word "issue" was intended to serve, after refereeing to Sri Niwas V. ITO cited in the judgement under attack and a Bombay decision, observed at page 108: The intention would be effectuated if the wider meaning is given to the expression 'issued'. The dictionary meaning of the expression 'issued' takes in the entire process of sending notice as well as service thereof. The said word used in Section 34(1) of the Act itself was interpreted by Courts to mean 'served'. Commissioner of Wealth Tax, U.P. v. Kundan Lal Behari Lal, AIR 1976 SC 1150. = ***2002-TIOL-1237-SC-WT*** *"*

13. Further, in the case of Kundan Lal Behari Lal (supra) the Hon'ble Apex Court has had an occasion to define the word "issued" and "observed" as under:

"The main question on which the High Court decided and which is the only question urged before us for admitting the petition is that the word "issued" occurring in Section 18(2A) of the Wealth Tax ct means "served". This decision is well supported not only by the decisions of the High Court but also of this Court. In Banarsi Debi v. I.T.O., Calcutta, this Court observed that the expressions "issued" and "served" are used as interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. Accordingly, it was held that the word "issued" was not used in the narrow sense of "sent" held that the word "issued" was not used in the narrow sense of "sent" but that the said expression had received, before the Indian Income Tax (Amendment) Act, 1959, a clear judicial interpretation. Subba Rao J., as he then was, dealing with the purpose which the word "issue" was intended to serve, after referring to Sri Niwas v. I.T.O. cited in the judgement under attack and a Bombay decision, observed at page 108:

The intention would be effectuated if the wider meaning is given to the expression "issued". The dictionary meaning of the expression "issued" takes in the entire process of sending notices as well as service thereof. The said word used in Section 34(1) of the Act itself was interpreted by Courts to mean 'served'."

14. Further in the case of Municipal Corporation of Delhi Vs. Dharma Properties Private Limited (supra) the Hon'ble Apex Court again had an occasion to define the word "issued" and "observed" as under:

"14. Section 444 prescribes the manner in which notices, etc. are required to be served or issued. The High Court has rightly pointed out that four eventualities are contemplated in Section 444(1). However, the expression "give" does not find mention in any of those eventualities. Mandate of Section 126 is "giving of a notice." Therefore, the question is as to whether at what stage, it would be treated that notice as stipulated in Section 126 has been given. In K. Narasimhiah, this Court has held that mere dispatch of notice would not amount to "giving" of notice. "Giving" would be complete only when it has been offered to the person/addressee concerned, even when it is not accepted by him on tendering. Likewise, in Banarsi Debi case, referring to Section 27 of the General Clauses Act, 1897 which deals with the expressions "serve" or "give" or "sent", this Court held that all these expressions, namely, "serve", "give" and "sent" are interchangeable terms and therefore notice would be treated to have been issued only when the entire process of sending the notice i.e. from dispatch till the service thereof, is complete."

15. We have also gone through the decision of Purushottam Jajodia (supra) relied upon by the Authorised Representative and para 13 of the said Order indicates as under:

"13. The key words, according to us, are -'informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty'. The object of Section 124(a) is that the person concerned had to be informed of the grounds on which the confiscation of the goods is to be founded. This can only happen when the person from whom the goods have been seized, receives the notice and is capable of reading and understanding the grounds of the proposed confiscation. Therefore, according to us, upon a conjoint reading of Section 110(2) and Section 124(a) of the said Act, the notice contemplated in these provisions can only be regarded as having been "given" when it is actually received or deemed to be received by the person from whom the goods have been seized. The whole object of giving the notice under Section 124(a) of the said Act is to inform the person concerned of the grounds of the proposed confiscation or proposed imposition of penalty as also to give him an opportunity to make a representation in writing so that an order confiscating or not confiscating the goods may be passed."
This decision also supports the case of the appellant.

16. Further in the case of MM Rubber Company (supra) relied upon by the learned Authorised Representative, the Hon'ble Apex Court had an occasion to determine the limitation and observed as under:

If an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefore. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made; that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the ower has been exercised within the prescribed time. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore, Courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeing the order or acting in conformity with it or of appealing against it or otherwise having it sent. This is based upon, as observed by Rajamanner, CJ in Muthia Chettiar V. CIT (ILR 1951 Mad. 815) "a salutary and just principle." The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law. The ratio of this distinction may also be founded on the principle that the Government is bound by the proceedings of its officers but contended by Sri Gaurishankar Murthy, to one of the two parties two a quasi judicial proceeding before the Collector and the Board's right under Section 35E to the exercise of the right of appeal by an aggrieved assessee from an order passed to its prejudice. The power under Section 35E is a power of superintendence conferred on a superior authority to ensure that the subordinate officers exercise their powers under the Act correctly and properly. Where a time is limited for the purpose by the statute, such power, as under Section 33A(2) of the Indian Income Tax Act, 1922 referred to in Muthia Chettiar (supra) should be exercised within the specified period from the date of the order sought to be

reconsidered. We are therefore of the opinion that the period of one year fixed under sub-section (3) of Section 35E of the Act should be given its literal meaning and so construed the impugned direction of the Board was beyond the period of limitation prescribed therein and therefore invalid and ineffective.

17. Now, we come to the Regulation 20 of the Customs Brokers Licensing Regulation, 2013 which is reproduced as under:

"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 person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The 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 licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 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 Commissioner of Customs."

18. On going through the said provision, the Commissioner of Customs shall issue a notice in writing to the Custom Broker within 90 days from the date of receipt of an offence report which means that the Commissioner of Customs is required to issue notice in writing to the Custom Broker which does not mean that if he has issued the notice and kept it in his file, so, he has complied with the provisions of Regulation 20 of CBLR, 2013. In fact, it is to be issued to the Custom Broker which means it should be received by Custom Broker. Therefore, relying on the decision of the Hon'ble Apex Court we hold that the notice was required to be received by the Custom Broker within 90 days of the receipt of the offence report. Admittedly, as per the impugned order itself, the notice was received by the Custom Broker only on 28 August, 2018 which is the period beyond the 90 days prescribed in the said Regulation. Therefore, we hold that the show cause notice issued to the Custom Broker is barred by limitation.

19. Consequently, the impugned order is not sustainable in the eyes of law. Accordingly, the same is set aside. In result, Appeal is allowed with consequential relief.

(Order pronounced in the open Court on 26.04.2019)