

**(2014) 08 MAD CK 0099**

**In the Madras High Court**

**Case No :** Writ Petition No. 30884 of 2013 and M.P. Nos. 1 and 2 of 2013

A.M. Ahamed and Co.

APPELLANT

Vs

Commissioner of Customs (Imports)

RESPONDENT

---

**Date of Decision :** 19-08-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1  
Customs Act, 1962 — Section 112(a), 127B, 129, 129A, 146

**Citation :** (2014) 309 ELT 433 : (2015) WritLR 210

**Hon'ble Judges :** V. Ramasubramanian, J

**Bench :** Single Bench

---

## **Judgement**

V. Ramasubramanian, J.—This is a writ petition filed by a Customs Broker, challenging the revocation of their licence and the forfeiture of their security deposit, ordered by the first respondent herein in terms of the provisions of the Regulation 20(7) of the Customs Brokers Licensing Regulations, 2013. I have heard Mr. P. Hari Radhakrishnan, learned Counsel for the petitioner and Mr. A.P. Srinivas, learned Standing Counsel appearing for the respondents.

2. The petitioner was granted a licence as Customs House Agent in terms of Regulation 9(1) of Customs House Agents Licensing Regulations, 2004, hereinafter referred to as the Regulations. The licence is valid up to 31-12-2016.

3. On 18-5-2010, the Directorate of Revenue Intelligence issued a show cause notice stating that the petitioner misdeclared the country of origin and undervalued the goods so as to evade payment of higher Customs Duty. The petitioner was asked to show cause as to why penalty should not be imposed in terms of Sections 112(a) and 114AA of the Customs Act, 1962.

4. By an Order-in-Original dated 31-1-2011, the Additional Commissioner of Customs imposed a penalty upon the petitioner. Thereafter, the Commissioner of Customs, Tuticorin passed an order on 6-9-2012 prohibiting the petitioner from operating in Tuticorin Customs Station, by passing an order in terms of Regulation 21 of the Regulations. It appears that the copy of this order was

forwarded by the Commissioner of Customs, Tuticorin to the Commissioner of Customs, Chennai who is the licensing authority.

5. Thereafter, the first respondent issued a show cause notice dated 12-11-2012, alleging that the petitioner failed to fulfill the obligations under Regulation 13(b), (d) and (e) of the Regulations, 2004. By the said show cause notice, the petitioner was called upon to show cause to the Deputy Commissioner of Customs, who is the second respondent herein and who was appointed as the enquiry officer, as to why the CHA licence should not be revoked in terms of the Regulation 22.

6. The petitioner filed a reply to the show cause notice dated 12-11-2013. An enquiry followed and the enquiry officer submitted a report on 19-5-2013. The petitioner was directed to attend a personal hearing and he did so.

7. In the meantime, the petitioner also filed a writ petition in W.P. No. 496 of 2013 on the file of the Madurai Bench of this Court, challenging the order of the Commissioner of Customs, Tuticorin, prohibiting the petitioner from operating in Tuticorin Customs Station. In the said writ petition an interim order was granted, but the respondents were permitted to proceed with the enquiry under Regulation 22.

8. Accordingly, the personal hearing went on and eventually an order dated 11-11-2013 was passed, revoking the licence granted to the petitioner and forfeiting the security deposit. Aggrieved by the said order, the petitioner is before this Court.

9. The impugned order is challenged primarily on the following grounds:-

(1) The impugned proceedings were not initiated within the period of 90 days prescribed under Regulation 22(1).

(2) The entire charge for which the petitioner was proceeded against, relate to an import made by a company by name M/s. I-Tech Imports and Exports. That company was also issued a show cause notice dated 12-5-2010. But that company went to the Board of Settlement Commission and got an order in their favour. Hence there is no question of penalising the petitioner.

(3) That the impugned order is in violation of the principles of natural justice.

Contention No. 1:

10. The first contention is that the proceedings under Regulation 22 were initiated beyond the time limit prescribed by Regulation 22(1). In order to test the correctness of the said contention, it is necessary to have a look at the Regulations.

11. In exercise of the powers conferred by sub-section (2) of Section 146 of the Customs Act, Central Board of Excise and Customs issued a set of Regulations known as Customs House Agents Licensing Regulations, 2004. Under the said

Regulations, no person shall carry on business as a Customs House Agent 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 under the Regulations. Regulation 20 empowers the Commissioner of Customs to revoke the licence of an agent and order the forfeiture of the whole or part of the security, on certain specific grounds stated in Clauses (a), (b) and (c) of sub-regulation (1) of Regulation 20. The procedure for suspending or revoking licence under Regulation 20 is prescribed in Regulation 22.

12. In other words, the power to suspend or revoke the licence is to be traced to Regulation 20 and procedure for suspending or revoking the licence is to be found in Regulation 22. The power of the first respondent to pass the impugned order is traceable to Regulation 20 and since there is no dispute in this case with regard to the same, it is enough if we take note of Regulation 22. Hence Regulation 22 is extracted as follows:-

"22. Procedure for suspending or revoking licence under Regulation 20. - (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent 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 House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs:

Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, 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 to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs 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 House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent 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 shall prepare a report of the inquiry recording his findings and submit his report within ninety days from the date of issue of a notice under sub-regulation (1).

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

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit 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).

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."

13. Under sub-regulation (1) of Regulation 22, the Commissioner of Customs should issue a notice in writing to the Customs House Agents within 90 days from the date of receipt of offence report. There is no dispute on the question of law that if a notice in writing is not issued within 90 days from the date of receipt of offence report, the proceedings under Section 22(1) will stand vitiated. But in the case on hand, there is a dispute about two things namely, (1) as to what an offence report is; and (2) as to how to calculate the period of 90 days prescribed in Regulation 22(1).

14. According to the petitioner, the Department of Revenue Intelligence investigated into the alleged incident and issued a show cause notice on 18-5-2010. This show cause notice was allegedly sent to the Chennai Commissionerate also and hence the issuance of the show cause notice by DRI has to be taken as the date of receipt of the offence report. Alternatively, it is contended by the petitioner that at least the date of the Order-in-Original namely 31-1-2011 imposing penalty could have been taken as the date of receipt of offence report, since the same was also communicated to the Chennai Commissionerate. The first respondent has calculated the period of 90 days only from the date of receipt of the prohibition order issued by the Commissioner of Customs, Tuticorin on 6-9-2012. This, according to the petitioner, will not satisfy the requirement of Regulation 22.

15. The respondents have filed a counter affidavit. In the counter affidavit, it is claimed by the respondents that the petitioner was granted licence by the Chennai Customs and that they were operating in Tuticorin Customs. According

to the respondents, the Commissioner of Customs, Tuticorin forwarded the case of the petitioner to the Commissioner of Customs at Chennai only by a letter dated 6-9-2012 and hence based upon the same, a show cause notice was issued on 12-11-2012 within the period of 90 days prescribed in sub-regulation (1) of Regulation 22. In the counter affidavit, the respondents have not chosen to deny the averments of the petitioner in ground No. (b) of Para 16 of the affidavit that the show cause notice dated 18-5-2010 issued by the DRI and the Order-in-Original dated 31-1-2011 passed by the Additional Commissioner, Tuticorin were all marked to the Chennai Commissionerate and that the Chennai Commissionerate had knowledge about the same.

16. Unfortunately, the Regulations do not define what an offence report is and the Regulations do not even state as to how an offence report is to be sent. The Regulations do not even use the expression "offence report" anywhere else other than Regulation 22(1). Even the grounds on which a licence can be revoked or suspended, mentioned in Regulation 20(1), do not include the definition of the expression offence or offence report. There are only three grounds on which a licence can be suspended or revoked under sub-regulation (1) of Regulation 20. Regulation 20(1) reads as follows:-

"20. Suspension or revocation of licence. - (1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely:-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station."

17. The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions, (ii) failure to comply with the regulations and (iii) a misconduct, for any of which, the licence can be revoked. Since the above regulation does not use the expression "offence report", we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an offence report. Consequently, the date of knowledge gained by the Commissioner, by means of any communication, be it show cause notice or order-in-original, has to be construed as the date of receipt of the offence report. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years.

18. The Regulations not only fail to prescribe what an offence report is and how it

is to be sent, but they do not also prescribe the person competent to send it. In such circumstances, the interpretation sought to be given by the petitioner is more acceptable.

19. The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 8-5-2010 with a copy marked to the first respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days.

20. The respondents relied upon a circular bearing No. 9/2010-Customs, dated 8-4-2010, issued by the Central Board of Excise and Customs, containing certain decisions. Paragraphs 5.1 and 5.2 of the Circular deal with suspension or revocation. Paragraph 5.2 may be extracted usefully as follows:-

"5.2. Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on "C" form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs field formations. However, the Commissioner of Customs, who had authorised a CHA to operate on "C" form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station."

21. It is seen from what is extracted above, that the Commissioner of Customs, Tuticorin was obliged to inform the details of the violation to the first respondent herein who had issued licence to the petitioner. The earliest intimation that the first respondent received, was the show cause notice dated 18-5-2010. Even if this communication had not been received by the first respondent, the first respondent received the order-in-original dated 31-1-2011. In Paragraph 16.B of the affidavit in support of the writ petition, the petitioner made a positive averment that the show cause notice and the order-in-original were received by the first respondent. Therefore, he ought to have issued the show cause notice within 90 days.

22. Relying upon the decision of the Supreme Court in *Sambhaji and Others Vs.*

Gangabai and Others, , it is contended by Mr. A.P. Srinivas, learned Standing Counsel for the respondents, that a procedural law should not ordinarily be construed as mandatory. But the said contention is wholly unsustainable, for the simple reason that a period of limitation prescribed by a Rule of procedure, cannot be diluted. The decision of the Supreme Court arose out of the refusal of a Civil Court to accept a written statement beyond a period of 90 days stipulated in Order-VIII, Rule 1 C.P.C. Therefore, the decision taken in such a case cannot be relied upon.

23. Similarly, the decision of the Division Bench of the Delhi High Court in M/s. Aval Exports and Another Vs. Union of India and Others, , relied upon by the learned counsel for the respondents, cannot also go to the rescue of the respondents. The case before the Delhi High Court was concerned of some applications filed for the issue of value based duty free licences in accordance with the Export and Import policy in vogue. The applications were kept pending for some time and eventually, the policy itself underwent a change. When the matter was taken up, it was argued that the applications ought to have been disposed of within the time stipulated. But the said argument was rejected, on the ground that the time prescribed therein was only directory and not mandatory.

24. In the case on hand, it is not the contention of the respondents that the time limit prescribed in Regulation 22(1) is only directory and not mandatory. It is not even the contention of the respondents that the time limit prescribed in Regulation 22(1) need not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld.

Contention 2:

25. The second contention of the petitioner is that the importer got the dispute settled in terms of Section 127B of the Customs Act, 1962 with the Settlement Commission. Paragraph 6.2 of the order of the Settlement Commission, relied upon by the petitioner in his affidavit, reads as follows:-

"The Bench observes that the applicant has made a true and full disclosure of all the facts relating to the imported goods. Besides, he has also submitted details of post-importation services/repairs undertaken by him and expenditure incurred on servicing, supply of spare parts, incidental charges, etc., which were not included in the original import value of the goods. The remittances were also made by him including service charges from India to Singapore through banking channels. His remittance transactions are thus licit transactions."

Therefore, it is contended that when the importer has now got a clean chit from the Settlement Commission, the petitioner who is only a Broker, cannot be penalised.

26. In Paragraphs 25 and 26 of the impugned order, the first respondent has dealt with this aspect. The first respondent has rejected this contention on the ground that the Settlement Commission settled the case upon confirmation of additional amount of customs duty, interest and nominal fine and penalty based upon the true and the full disclosure. Therefore the first respondent has concluded that the importer was guilty of undervaluation and that consequently, the petitioner cannot escape liability. But, what the first respondent has failed to take note of, is the fact that the revocation of licence now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds. Hence, the writ petition is allowed and the impugned order is set aside. No costs. Consequently the M.P. is closed.