

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. I

Customs Appeal No.40232 of 2025

(Arising out of Order No.04/2025 dated 03.02.2025 passed by Commissioner of
Customs (General), Chennai)

M/s. Kailash Shipping Services Pvt. Ltd.

.... Appellant

1st Floor, 42, 5th Cross Road, North Phase,
Industrial Estate, Ekkatuthangal, Chennai 600 032.

VERSUS

The Principal Commissioner of Customs,

...Respondent

General Commissionerate
Custom House, 60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Hari Radhakrishnan, Advocate, for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40629/2025

DATE OF HEARING : 17.04.2025

DATE OF DECISION : 19.06.2025

Per AJAYAN T.V.

M/s. Kailash Shipping Services Pvt Ltd, the appellant herein, has preferred this appeal challenging the Order No.4/2025 dated 03.02.2025 of the Principal Commissioner of Customs, Chennai Customs Zone, Chennai, whereby it was ordered that the suspension of the appellant's Customs Broker License which had been suspended by a preceding Order No.02/2025 dated 06.01.2025, be continued, in terms of Regulation 16(2) of the Customs Brokers Licensing Regulations, 2018 (CBLR 2018).

2. Succinctly, the facts are that the appellant is a licensed Customs Broker having a license No.R-302/CHA valid upto 07.01.2026. Based on an offence report dated 05-12-2024 issued by the Additional Commissioner of Customs, Chennai IV Commissionerate, the Customs Broker License of the appellant was suspended. The allegation in the offence report was that on 14-11-2024 the appellant produced a tampered and fake self-sealing permission letter dated 04.08.2023 while clearing three export containers on behalf of an exporter at the Direct Port Entry (DPE) Facility located at Thiruvottiyur, Chennai. The appellant vide letter dated 21.11.2024 admitted that the manipulation was done by the appellant's staff who attended the clearance work, without the knowledge of his immediate superior and that the appellant had suspended the person. Consequently, the Principal Commissioner of Customs, being of the view that it appeared that the appellant has failed to fulfil its responsibilities as mandated under the CBL regulations *ibid*, and that it is necessary to take immediate action against the appellant to prevent them from further misusing the customs broker license, accordingly, vide Order No.02/2025 dated 06.01.2025, suspended the appellant's Customs Broker License in terms of Regulation 16(1) of the CBLR, 2018. Thereafter, the appellant was granted a personal hearing on 21.01.2025 during which the appellant requested for revocation of the suspension on account of the submissions made. However, the Principal Commissioner, vide the impugned Order No.4/2025 dated 03.02.2025 continued the suspension of the appellant's customs broker license. Hence this appeal.
3. The further fact that is germane is that subsequently, the Principal Commissioner of Customs, Chennai Customs Zone, Chennai, issued a show cause notice No.09/2025 dated 17-03-2025 issued on 18-03-2025 having

DIN : 20250373mz000000D81E (SCN), calling upon the appellant to show cause in writing as to why the customs broker license issued to the appellant should not be revoked, the security deposited by the appellant should not be forfeited and why penalty should not be imposed upon the appellant in terms of Regulation 14 and 18 of the CBLR, 2018. The SCN ibid was issued under regulation 17(1) of the CBLR, 2018 and a copy of the same produced by the appellant was taken on record in as much as we are satisfied that its production is for sufficient cause since the appeal itself has been listed consequent to an out of turn hearing allowed earlier as the matter concerns the livelihood of the appellant.

4. Shri. Hari Radhakrishnan, Advocate appeared and argued on behalf of the appellant. The Ld. Counsel contended that the impugned order itself is passed beyond the limitation period prescribed in Circular No.09/2010-Cus dated 08-04-2010 and further that the allegations in the SCN do not justify any immediate action of suspension as the appellant had an unblemished track record till date. It was also submitted that on merits too the appellant did have an arguable case. Nevertheless, he would state that the very show cause notice that has now been issued to the appellant, having been so issued beyond the time limit of three months from the date of receipt of the offence report, is not maintainable and given that the final measure taken by the authorities, namely the issuance of the show cause notice, itself is beyond the stipulated time limit and thus not maintainable being issued without jurisdiction, the interim measure of extension of suspension presently under challenge does not have an existence independent of such final measure. He would place reliance on the decision of the Honourable High Court of Madras vide **Order dated 13.10.2017 in C.M.A No.730 of 2016 in the case of M/s.Santon Shipping Services v. The**

Commissioner of Customs, Carewell Shipping Pvt. Ltd v CC, Chennai, 2019 (368) ELT 1059 (Mad), KTR Logistics Solutions Pvt Ltd v CC, 2020 (371) ELT 685 (Mad) and CC (Seaport Import) Chennai v. CESTAT Chennai, 2014 (310) ELT 673 (Mad), Commissioner of Customs, Tuticorin v MKS Shipping Agencies Pvt Ltd, 2017 (348) ELT 640 (Mad), Indair Carrier Pvt Ltd v CC (General), 2016 (337) ELT 41 (Del), Impexnet Logistics v CC, (General), 2016 (338) ELT 347 (Del) and Jai Logistics Services Pvt Ltd v Principal Commissioner of Customs, Chennai-VII, (2024) 16 Centax 362 (Mad).

5. Mr. Sanjay Kakkar, Ld. Authorised Representative, appeared for the Respondent and reiterated the findings in the impugned order.
6. Presently, the issuance of show cause notice No.09/2025 dated 17-03-2025 issued on 18-03-2025 having DIN : 20250373mz000000D81E (SCN), under Regulation 17(1) of the CBLR,2018 is an undisputed fact. We find that in light of the SCN No.09/2025 as detailed supra having been issued and its production is with sufficient cause since the appeal itself has been taken up for out of turn hearing as the matter concerns the livelihood of the appellant; such changed circumstances warrant our taking cognizance of the said SCN thereby resulting in the issues to be determined being whether, the proceedings thereunder, as well as the interim proceeding of suspension challenged herein, survive if the SCN has been issued beyond the mandated period stipulated in Regulation 17(1) of the CBLR 2018?
7. On a perusal of the CBLR, 2018 notified vide Notification No.41/2018-Customs (N.T) dated 14th May, 2018, in supersession of the CBLR, 2013

dated 21st June 2013, it is seen that Regulation 14 empowers the Principal Commissioner or Commissioner of Customs to revoke the license of a Customs Broker and order for forfeiture of part or whole of security on any of the grounds stipulated therein, subject to the provisions of Regulation 17. The proviso to Regulation 16(2) stipulates that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17. Regulation 17 of CBLR, 2018 which prescribes the procedure for revoking license or imposing penalty, at Regulation 17(1) of CBLR *ibid*, stipulates that the Principal 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 license 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.

8. Indisputably, the show cause notice No.09/2025 dated 17-03-2025 which came to be issued on 18-03-2025, itself in para 2 therein states as under:
" An offence report, vide Letter No.CUS/DOCK/REG/12/2024-Docks dated 05.12.2024 and the relied upon documents, was received from ADC, Chennai-IV Commissionerate, Chennai Custom House in this office on 09.12.2024, detailing irregularities involving M/s. Kailash Shipping Services Pvt Ltd, Chennai (Customs Broker License No.R-302, PAN No.AAACK2806RCH001, with a request to initiate necessary action."

9. When the mandate of Regulation 17(1) is that the Principal Commissioner of 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, evidently the SCN No.09/2025 dated 17-03-2025 issued, is beyond 90 days from 09.12.2024, the date of receipt of the offence report. The show cause notice ought to have been issued on or before 08.03.2025, which is the 90th day from the date of receipt of the offence report. Therefore, the show cause notice has clearly been issued beyond the time limit prescribed in the regulation 17(1) *ibid*.

10. At this juncture, it would be appropriate to note the ***Judgement dated 13.10.2017 of the Honourable Madras High Court in C.M.A No.730 of 2016 in the case of M/s.Santon Shipping Services v. The Commissioner of Customs***. The relevant portions are reproduced below:

"41. In view of the aforesaid Judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more *res integra*.

42. Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored.

43. It is not the case of the 1st respondent that the 90 days limitation contemplated under Regulation 22(1), is directory. It is also not the case of

the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.

44. Since the offence report was dated 22.9.2010 and the show cause notice, admittedly, was issued only on 18.11.2011, there can be no doubt that the said show cause notice was issued well beyond the period of limitation of 90 days.

45. Whatever be the claim and counter claim on the merits, in this appeal can, in our view, they get shadowed by the failure on the part of the Revenue in not acting in time, by issuing the show cause notice, within the period as contemplated under Regulation 22(1) of CHALR, 2004.

46. Therefore, we are of the considered view, and in fact have no hesitation to hold so that, the Revenue has not issued the show cause notice dated 18.11.2011 within the period of limitation prescribed under Regulation 22(1) CHALR, 2004 and thus, the consequent proceedings involving revocation of the appellant's CHA licence and forfeiture of its security deposit, is unlawful”.

11. We find that the ratio of the aforesaid Judgement is squarely applicable in the instant case. Respectfully adhering to the same, we hold that the time period for issuance of show cause notice prescribed in Regulation 17(1) is mandatory and that in the instant case the Principal Commissioner of Customs, has not issued the show cause notice No.09/2025 dated 17-03-2025 within a period of ninety days from the date of receipt of an offence report, which is the period of limitation prescribed under Regulation 17(1) of the CBLR 2018. In as much as we have now taken cognizance of the issuance of the said SCN No.09/2025 dated 17-03-2025, we hold that the

SCN having been issued beyond the period of limitation, is without jurisdiction and thus being non-est in law, is not maintainable. Having found the consequential proceedings as being without jurisdiction, resultantly, we hold that the proceedings initiated under the impugned order of continued suspension, which is prior to the consequential proceedings under Regulation 17 calling upon the appellant to show cause, does not have an independent continued existence and therefore cannot sustain. Accordingly, we set aside the impugned order.

12. In sum, the proceedings directed against the appellant under the impugned order, as well as any proceedings under the said SCN No.09/2025 dated 17-03-2025 which for the reasons aforementioned, we have held as not maintainable, do not survive henceforth, and thus all such proceedings are hereby ordered to be ceased forthwith.

The appeal is allowed, with consequential relief in law, if any.

(Order pronounced in the open court on 19.06.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)