

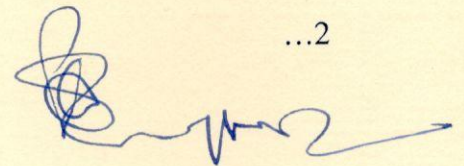
**OPINION****1. Queriest :**

M/s. LA Freightlift Pvt. Ltd.,  
No.32 & 32 A, Second Cross Street,  
V.G.P. Murphy Square, St. Thomas Mount,  
Chennai – 600 016.

**2. Facts :**

- 2.1 The queriest is a Customs Broker and Freight Forwarder. In connection with the Authorized Economic Operator Programme announced by the Government of India for facilitating smooth customs clearance work, the queriest has made an application for grant of AEO - LO status. It is stated that the said application in this regard was filed in January 2020 and various sections of the Custom House have to issue no objection certificate with regard to any cases/notices pending against them for consideration of the application by the program manager. It is further reported that SIIB section has orally indicated that there is a case pending against them in CESTAT, Chennai and under such circumstances, it may not be possible to issue no objection certificate.
- 2.2 From the information provided and available, it is seen that a Show Cause Notice dated 2.6.2014 was issued to the queriest under CBLR 2013 proposing revocation of their licence and consequent penalties, forfeiture of security deposit etc. in connection with an attempted export of Red Sander logs. After due process of law, the Commissioner of Customs, Chennai-VIII dropped the proposal with regard to revocation of licence. However, he ordered forfeiture of the security deposit made by the queriest under CBLR 2013. Aggrieved by the above order dt.6.6.2016 passed by the Commissioner, the queriest has filed an appeal under reference C/41640/2016 before CESTAT, Chennai. In this appeal, the limited issue of forfeiture of security deposit is being contested by the queriest. This appeal is pending as on date before the Tribunal.
- 2.3 It is seen that simultaneously the department also has filed an appeal against the very same order on the ground that considering the nature of the allegations the Commissioner ought to have considered revocation and therefore the matter needs to be reconsidered by the Commissioner. In this background, the department has filed an appeal before CESTAT, Chennai under reference C/41770/2016 praying for remitting the case to the adjudicating authority i.e. the Commissioner of Customs for fresh consideration. This appeal also is pending as on date before the Tribunal.

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3. **Query :**

In the above factual matrix, the querist wants clarification with regard to the objection raised by the Custom House for issuing no objection certificate.

4. **Opinion :**

- 4.1 The AEO programme has been formulated in 2016 for facilitating fast and smooth customs clearance on the basis of recommendations made by WCO. The main circular issued for implementing the programme is 33/2016-Cus. dated 22.7.2016. This circular sets out the details of the programme and lays down the conditions to be complied with by the applicants and the procedures to be followed. Para.3.2 of the above circular with regard to legal compliance to be met by the applicants states the following:

**“3.2 Legal Compliance :**

3.2.1 There should be no show cause notice issued to them during last three financial years involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax has been collected from customers but not deposited to the Government.

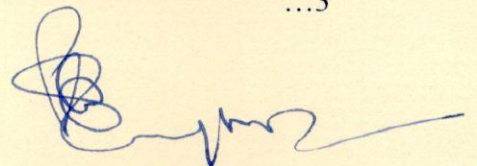
3.2.2 There should be no case wherein prosecution has been launched or is being contemplated against the applicant or its senior management.

3.2.3 If the ratio of disputed duty demanded or drawback demanded or sought to be denied, in all the show cause notices issued under the Customs Act, 1962 (other than those mentioned in Para 3.2.1 and 3.2.2) during the last three financial years, to the total duty paid and drawback claimed during the said period is more than ten percent, a review would be taken of the nature of cases and decision would be taken on issue or continuance of AEO status by AEO Programme Manager.

*Explanation :* for para 3.2.1, 3.2.2 and 3.2.3 above, the cases where the show cause notices have been dropped or decided in favour of the applicant by the adjudicating or appellate authorities will not be considered.”

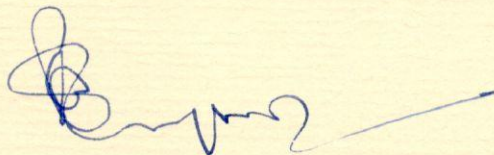
- 4.2 A perusal of the above provisions contained in the said circular will make it clear that the bar is only with regard to any show cause notice issued during the last three financial years. Even in respect of notices issued within the three-year period, as per the explanation, it may be seen that if the proposals contained in the show cause notice have been dropped or decided in favour of the applicant, then, such show cause notices are not to be taken into consideration.

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- 4.3 It may be noted that in the present case a show cause notice has been issued under CBLR 2013 proposing action under the said regulations for an alleged involvement in the attempted export of red sander by an exporter. The said show cause notice was issued in June 2014 i.e. more than six years back. After due process of law, this notice was adjudicated upon and an order in original was passed in June 2016 dropping the proposals with regard to revocation of licence and ordering only forfeiture of security deposit. Thus, the adjudication proceedings in terms of the show cause notice came to an end in June 2016. Aggrieved by the said order, both the queriest as well as the department are on appeal before CESTAT, Chennai. In the light of huge pendency of cases in the Tribunal at Chennai, it so happens that these appeals filed in 2016 before the Tribunal are still pending.
- 4.4 However, with regard to stipulations given in the circular mentioned above, it is to be noted that the said show cause notice as well as the order in original as well as the appeals pending before the Tribunal will not have any relevance whatsoever for considering the AEO application. Para 3.2.1 only stipulates that no show cause notice should have been issued during the preceding three financial years. It is not referring to any notice issued prior to the three preceding financial years. Such notices may be pending or could have been closed or appeals may be pending. Irrespective of their status, any notice issued prior to the three preceding financial years will not come into picture for considering the eligibility as per para 3.2.1.
- 4.5 Hence, in our view, based on the information provided, the application of the queriest will not be hit by any bar as stipulated in para 3.2.1 of the above circular.



**S. MURUGAPPAN**

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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.