Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 2

Customs Appeal No. 10628 of 2023-DB
(Arising out of OIA/OIO NO. : KND-CUSTM-000-COM-05-2023-24 Dated-17/08/2023 passed by Ld. Commissioner of Customs , Kandla)

M/s. Krishna Shipping And Allied Services ....Appellant
Office No. 53/54-A, Transport Nagar, NH-8
Gandhidham-370201
Kutch-Gujarat.

VERSUS

C.C-Kandla ....Respondent
Customs Office of the Commissioner of Customs,
Near Balaji Temple, Kandla, Kuchchh,
Gujarat-370210.

APPEARANCE:
Shri.Vikas Mehta, Consultant for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C.L MAHAR, MEMBER (TECHNICAL)

Final Order No. A/ 12207 /2023

DATE OF HEARING:15.09.2023
DATE OF DECISION:06.10.2023

SOMESH ARORA

The appellant is a partnership firm comprising of two partners, namely, Shri Karsanbhai Morumal Thakkar and Shri Pankaj Karsanbhai Thakkar and is engaged in transacting business as Custom House Agent at Kandla, Mundra and other Customs stations by virtue of Custom House Agent (Custom Broker) licence No. KDL/CHA/R/45/2011 dated 20.12.2021 (Custom Broker Licence) issued by Ld. Commissioner of Customs, Kandla.

2. On 28.07.2023, Ld. Commissioner of Customs, Kandla, issued an order inter alia suspending the Custom Broker Licence with immediate effect by citing one Offence Report dated 07.07.2023 received by him from Directorate of Revenue Intelligence, Ludhiana.

3. Ld. Commissioner, in his order noted that, DRI, in their Offence Report have informed that M/s. Aditya Exports, a partnership firm of Shri Mehul Pujara and Shri Naimish Sodha, engaged as a warehousing unit in Kandla Special Economic Zone, was de facto controlled and operated by Shri Pankaj Thakkar, one of the partners of appellant firm; that during October, 2022 and March, 2023, the said M / s Aditya Exports cleared imported Black Pepper from Kandla Special Economic Zone into DTA by wrongly claiming that the said goods were of Afghan origin and thereby, availing benefit of NIL rate of duty on the said goods in a wrongful manner; that the shipping agents stated before DRI that the goods had sailed for India from Jebel Ali and the Bills of Lading showing the port of loading as Bandar Abbas were fake; that the two partners of M / s Aditya Exports stated that all the business was carried out by Shri Pankaj Thakkar only; that Shri Vijay Rathod, an employee of appellant stated that he looked after accounting work of M / s Aditya Exports on the instructions of Shri Pankaj Thakkar, that Shri Sanjeev Roy, employee of M / s Aditya Exports stated that he was hired by Shri Pankaj Thakkar to perform Customs related work of M/s. Aditya Exports and was paid salary by M / s Aditya Exports; that IGST payment for clearance of goods from M / s Aditya Exports to DTA buyers, namely, M / s Cuthbert Winner LLP and M / s Cuthbert Oceans LLP as well as payment of freight for transportation of goods from port of import, L.e. Mundra to KASEZ was made by the appellant both the said DTA buyers however were untraceable.

4. Regulation 17(9) of CBLR, 2013 was invoked in the matter.

> "The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts of omissions of his employees during their employment."

5. After having suspended the Licence with immediate effect, Ld. Commissioner granted a post-decisional hearing on 08.08.2023 to the

appellant. However, Vide impugned order, the Commissioner maintained the suspension and aggrieved by the same, appellants have filed the present appeal.

6. The appellant made following written and verbal submissions before the Ld. Commissioner.

(i) The appellant was never appointed by M / s Aditya Exports in KASEZ and or their DTA buyers to act as Customs Broker; that clearance was carried out by M / s Aditya Exports by using a dongle key allocated to them by Customs authorities in KASEZ. As such, there was no requirement of Custom Broker, that hence, the appellant had never acted as Custom Broker in connection with goods under consideration; filed that the appellant having not transacted Custom Broker business, the allegation regarding breach of Regulation 17(9) of CBLR, 2013 was ab initio void and liable to be quashed.

(ii) In absence of appointment or role of Custom Broker between SEZ and DTA transactions, averments made with reference to conduct of Shri Pankaj Thakker, F-Card holder and a partner of appellant is beyond the scope of expression "in the transaction of (CB) business" employed in Regulation 17(9) of CBLR, 2013.

(iii) As such, suspension after over 03 months of commencement of inquiry of DRI is sufficient to establish that there was no urgency to suspend the Licence with immediate effect. Decision of Hon'ble High Court of Delhi in the case of Babaji Shivram Clearing & Carriers Pvt. Ltd. v / s Union of India, 2011 (269) ELT 222 (Bom.) was cited.

(iv) DRI is carrying out investigation in the matter involving Shri Pankaj Thakker in his individual capacity and not against the appellant, i.e. M / s Krishna Shipping and Allied Services. As a matter of fact, M/s. Krishna Shipping and Allied Services was never appointed as Custom Broker in connection with clearance by M / s Aditya Exports from KASEZ. A decision of Hon'ble Tribunal in the case of Sun Clearance Agency v/s Commissioner of Customs (General), Mumbai, 2023 (8) TMI 360 - CESTAT Mumbai was cited.

(v) Regulation 17(9) of CBLR,2013 was erroneously invoked as CBLR,2013 had ceased to exist.

7. Ld. Commissioner after consideratin passed the impugned order for continuing the suspension of the Custom Broker Licence granted to appellant.

8. Appellants took the following grounds in appeal during hearing:-

9. The impugned order lacks jurisdiction to suspend Custom Broker and Licence in the facts and circumstances where no clearance of imported goods has taken place on the strength of the Licence.

9.1 The appellant submit that Ld. Commissioner has erred in failing to take into consideration provisions of Regulation 10 (a) of Customs Brokers Licensing Regulations, 2018. The same is reproduced below for the case of ready reference:

"<u>Regulation 10.</u> Obligations of Customs Broker.-A Customs Broker shall (a) obtain an authorization from each of the companies, firms or individuals <u>by whom he is for the time being employed as a Customs Broker</u> and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

9.2. The appellant submitted that they have consistently maintained that they were never employed by M / s Aditya Exports as a Customs Broker and were never given any authorization to transact the business of Custom Broker in connection with goods imported by them into Kandla Special Economic Zone and cleared from the Zone to Domestic Tariff Area. As such, it is a matter of record that the appellant has never acted as Custom Broker in relation to any goods cleared by M / s Aditya Exports. Ld. Commissioner has not relied upon any authorization given by M/s. Aditya Exports to appellant nor any Bill of Entry filed by appellant in the capacity of Custom Broker authorized by M / s Aditya Exports or their DTA. Ld. Commissioner has also not disputed the submission of appellant that clearance is permitted from Kandla Special Economic Zone on the Bills of Entry filed through a dongle supplied to the unit operating in the Zone, without any role of any Custom Broker. There are no findings to suggest that the appellant had transacted any business on the strength of Custom Broker Licence issued to them insofar as M/s. Aditya Exports is concerned. Hence, the impugned order suspending the Custom Broker Licence under Rule 16 (1) of CBLR,2018 is without jurisdiction, being beyond the scope of CBLR,2018.

9.3. The impugned order renders certain words and expressions used in Rule 13 (12) of CBLR,2018 redundant and otiose, which is not permissible in law.

9.4 Ld. Commissioner has ordered for immediate suspension of the Custom Broker Licence by citing violation of Regulation 13 (12) of CBLR, 2018.

9.5 Regulation 13 (12) of CBLR,2018 is reproduced below for the ease of ready reference:

> "(12) The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of the employees in the transaction of business and he shall be held responsible for all acts of omissions of his employees during their employment."

9.6 The appellant say and submit that Ld. Commissioner could not have ignored the expression "in the transaction of business" appearing in Regulation 13 (12) of CBLR,2018 and passed orders for suspension of the Custom Broker Licence without alleging and establishing that the assumed and alleged acts of Shri Pankaj Thakker were in the course of transaction of Custom Broker business of the appellant in relation to goods imported and cleared by M/s. Aditya Exports and/or DTA units. Ld. Commissioner has nowhere found that the alleged acts of Shri Pankaj Thakkar were in the course of transaction of Custom Broker business of appellant with regard to M/s. Aditya Exports. Therefore, merely because it is alleged that Shri Pankaj Thakker is the alleged mastermind and beneficiary of the entire fraud, the same cannot automatically result in immediate suspension of the Custom Broker Licence given to appellant without even establishing that the alleged acts of Shri Pankaj Thakkar were in the transaction of business of the appellant as Customs Broker. A harmonious reading of Regulation 13 (12) would inform that any act of employee which is not in the course of transaction of Custom Broker business and where there is no authorization to act as Custom Broker, is beyond the scope of Regulation 13 (12) of CBLR, 2018. Therefore, on this ground also, the impugned order is not tenable in the eyes of law and accordingly, the same is liable to be quashed and set aside.

10. Ld. Commissioner has erred in failing to appreciate that a Custom Broker and his employee are two different legal entities and hence, a Customs Broker cannot be held responsible for the acts or omissions of his employee where there is neither any appointment nor any role of Custom Broker.

10.1 The appellant further submitted that as per Section 2(d) of Customs Brokers Licensing Regulations, 2018, "Customs Broker" means a person licensed under these regulations to act as an agent on behalf of the importer or an exporter for purposes of transaction of any business relating to the entry or departure of conveyances of the import or export of goods at any Customs Station.

10.2 In this case, the license under the CBLR,2018 is issued to the appellant and not Shri Pankaj Thakkar, who is a different legal entity.

10.3 It is evident from the impugned order that the inquiry being undertaken by DRI is in regard to the alleged acts of Shri Pankaj Thakkar in his private capacity and not against the appellant in the capacity of Customs Broker.

10.4 Ld. Commissioner has nowhere held that Shri Pankaj Thakkar have used the Customs Broker Licence of appellant in relation with goods imported, warehoused and removed from Kandla Special Economic Zone by M / s Aditya Exports.

10.5 The appellant rely upon the decision of Hon'ble Tribunal at Mumbai in the case of Sun Clearing Agency v / s Commissioner of Customs (General), Mumbai, 2023 (8) TMI 360 - CESTAT Mumbai, wherein, action under CBLR, 2018 for revocation of the licence was set aside on the ground that the appellant, though holding a licence, was not appointed as Customs Broker.

10.6 Hence, the inference that the appellant has violated Regulation 13 (12) of CBLR,2018 is patently wrong and hence, untenable in the eyes of law.

11. The impugned order does not abide by the Circulars issued by Central Board of Excise & Customs (CBEC), now, Central Board of Indirect Taxes and Customs (CBIC).

11.1 The appellant say and submit that the impugned order does not abide by the Board's Instruction No. 24/2023, wherein, it is set out that suspension is not visualized for application in a routine or mechanical manner in every case. Further, it has made incumbent upon Commissioner to record reasons for immediate suspension. In this case, the impugned order does not satisfy the criteria laid down by Board in the said Instructions. Therefore, on this ground also, the impugned order is not tenable in the eyes of law and accordingly, the same is liable to be quashed and set aside.

11.2 The impugned order is also contrary to Board's guidelines contained in Circular No. 9/2010-Cus., dated 8.4.2010. At para 7.2 ibid, it is laid down that where immediate suspension is warranted, the investigating authority shall furnish its report to the Commissioner of Customs, within thirty days of the detection of an offence. Further, the Licensing authority shall take immediate suspension action within fifteen days of the receipt of the report of the investigating authority. In this case, it is a matter of record that statements of Shri Sudhakar Chikati, Manager of M/s. Aiyer Shipping Agency Pvt. Ltd., Shri Ankit Sharma, Business Development Manager of M/s. Vision Container Line Pvt. Ltd. & M/s. Evershine Container Line Pvt. Ltd. and Shri Vijay Sureshbhai Rathod, employee (accountant) of appellant were recorded by DRI on 26.04.2023, 28.04.2023 and 24.04.2023, respectively. However, DRI has sent report to the Licensing authority on 07.07.2023, which is beyond 30 days prescribed by Board. Similarly, the order for immediate suspension was issued on 28.07.2023, i.e. after expiry

of the 15 days of receipt of Offence Report from DRI on 07.07.2023. Thus, both the time limits stipulated by the Board have been breached.

11.3 It is a settled law that Board's Circulars are binding on revenue and non- adherence to time lines prescribed for taking action under CBLR would render all such action infructuous. Therefore, on this ground also, the impugned order is not tenable in the eyes of law.

12. The impugned order does not satisfy the legal requirements of Regulation 16 (1) of CBLR, 2018.

12.1 As per Regulation 16 (1) of CBLR,2018,

"Regulation 16. Suspension of license. (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated."

12.2 The appellant say and submit that Regulation 16 (1) can be invoked only if the following 02 tests are satisfied:

(i) Whether the case is an "appropriate case", and

(ii) Whether "immediate action" is warranted.

12.3 Ld. Commissioner has nowhere found that this is an appropriate case for suspension of Custom Broker License. Even otherwise, in the facts and circumstances where the license has not been used and the dispute is between DRI and Shri Pankaj Thakkar in his personal capacity, no inference can be drawn that this is an appropriate case for suspending the license.

12.4 The test of "immediate action" is not satisfied given the fact that time lines prescribed by Board is not observed.

12.5 The appellant hereby rely upon the decision of Hon'ble High Court of Mumbai in the case of Babaji Shivram Clearing & Carriers Pvt. Ltd. v/s Union of India reported at 2011 (269) ELT 222 (Bom.), wherein, Hon'ble High Court quashed and set aside suspension order passed on 28.03.2011 by citing knowledge of Customs authority about alleged irregularities in January, 2011.

12.6 Hence, it is submitted that the legal requirements of Regulation 16 (1) is not satisfied. Therefore, the impugned order passed by invoking Regulation 16(1) of CBLR,2018 is liable to be quashed and set aside.

13. The appellant further submitted that suspension with immediate effect is an extreme step having a direct impact on the livelihood of the appellant and their employees. Hence, it was incumbent upon Ld. Commissioner to abide by the legal safeguards provided in Regulation 16(1) of CBLR,2018 as well as Circulars and Instructions issued by the Board from time to time. However, it is evident from the impugned order that the same is passed in a mechanical manner without complying the safeguards prescribed in law as well as by Board. He placed reliance on the following judgments as follows:-

- Mb Kotak-2019 (369) ELT 1314 (Tri.-Ahmd.)
- HIM Logistics Pvt. Ltd., 2015 (325) ELT 793 (Tri.-Del.)
- Exfin Shipping (1) Ltd., 2003 (153) ELT 534 (Tri.-Mumbai)
- M. K. Saha & Company, 2021 (376) ELT 534 (Tri.-Kolkata)
- Ratnadip Shipping Pvt. Ltd., 2019 (370) ELT 1765 (Tri.-Mum)
- International Shipping Agency, 2006 (196) ELT 439 (Tri-Mumbai)
- Leo Cargo Services, 2022 (382) ELT 30 (Del.)
- Indair Carrier Pvt. Ltd., 2016 (337) ELT 412 (Del.)

14. Further during hearing following arguments were put forward through submissions.

15. Without prejudice to the submissions advanced in the appeal memo, it is submitted that the time limit prescribed by Board for passing any order for immediate suspension of Custom Broker licence is violated, which may be kindly appreciated from the following time line:-

Date	Event	Page/Para of appeal memo	Time limit prescribed by Board	Submission
24.04.2023	Statement of Shri Vijay Sureshbhai Rathod, employee of appellant	Page 32 Para 5.1	As per Board's Circular No. 9/2010-Cus dated 8.4.2010, the investigation authority shall furnish its report to Commissioner of Customs within thirty days of the detection of offence (Para 7.2 ibid)	The report of investigation authority was received by Commissione r on 07.7.2023, i.e. after the expiry of 30 days from detection, which came into light from the said statements.
25.04.2023	Statement of Shri Naimish Hiimatlal Sodha and Shri Mehul Pujara, Partners of M/s. Aditya Exports	Para32, Page 5.2		
26.04.2023 & 28.04.2023.	Statement of Branch Mangers of Shipping line	Page 32 Para 5		
12.05.2023	Statement of Shri Sanjeev Roy, Customs Representative of M / s Aditya Exports	Page 32 Para 5.3		
07.07.2023	Receipt investigation report by Commissioner	Page 27		
28.07.2023	Commissioner passed order for immediate suspension.	Para 30	As per Board's Circular No. 9/2010-Cus., dated 8.4.2010, the Licensing authority shall take necessary immediate suspension action within fifteen days of	The offence report received 07.07.2023. However, the order for immediate

			the receipt of the report of the investigating authority.	suspension was passed on 28.07.2023, i.e. after expiry of 15 days of receipt of the offence report.

16. Both the time lines, i.e. time limit for furnishing the offence report by investigating authority and time limit for passing order for immediate suspension prescribed by Board have been violated.

17. It is a settled law that Circulars issued by Board is binding on the officers. The time lines prescribed by Board with reference to CBLR are sacrosanct and Revenue is bound to follow the same, as duly held by Hon'ble High Court of Delhi in Leo Cargo Services, 2022 (382) ELT 30 (Del.) and Indair Carrier Pvt. Ltd., 2016 (337) ELT 41 (Del.) that are placed in the compilation.

18. Again vide letter dated 23rd September, 2023, the learned Counsel for the appellant made following additional submissions:-

18.1 M/s. Krishna Shipping and Allied Services, Gandhidham, the appellant, have filed appeal No. C/10628/2013 against continuation of immediate suspension of their Custom Broker License by Ld. Commissioner of Customs, Kandla under Regulation 16(2) of Customs Broker Licensing Regulations, 2018 ("CBLR,2018").

18.2 . Ld. Commissioner had ordered for immediate suspension of the Custom Broker License by citing violation of erstwhile Regulation 17 (9) of

CBLR,2013, which was rectified to read as Regulation 13 (12) of CBLR, 2018.

18.3 Regulation 13 (12) of CBLR, 2018 is reproduced below for the ease of ready reference:

> *"The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment"*

18.4 The appellant had consistently contended before Ld. Commissioner that they were never appointed to act as Custom Broker by M/s. Aditya Exports, the warehousing unit in Kandla Special Economic Zone as well as M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP, the two DTA units to whom M/s. Aditya Exports cleared the imported goods and the DRI was conducting inquiry in respect of alleged acts or omission by Shri Pankaj Thakkar in his private capacity and not in the course of transaction of any Custom Broker business by the appellant. Undisputedly, the appellant and Shri Pankaj Thakkar are different legal entities.

18.5 Hon'ble Tribunal has held in the case of Mb Kotak v/s Commissioner of Customs, Kandia, 2019 (369) ELT 1314 (Tri.-Ahmd.) that allegation under Regulation 17 (9) of CBLR, 2013 can only be made in respect of cases where the imports are made through the Customs Broker themselves in transaction of business. Further, any action by any employee in a personal capacity, not in transaction of business of the Customs Broker, cannot be held against the Customs Broker. A copy of the decision is placed at Page 01 of the compilation tendered during hearing on 15.09.2023.

18.6 In the case of Him Logistics Pvt. Ltd., 2015 (325) ELT 793 (Tri.-Del.), placed on page 3 of the said compilation, Hon'ble Tribunal has set aside the suspension on the ground that the appellant had not filed any Shipping Bill (similar to the case in hand) and Commissioner has blurred the distinction between their employee and the appellant and disregarded the facts that there two are different legal persons. The decision of Hon'ble Tribunal in the case of Sun Clearing Agency, 2023 (8) TMI 360 CESTAT MUMBAI placed at page 45 of the appeal memo is also to the effect that no action can be initiated for violation of CBLR when he was not engaged as Customs Broker.

18.7 In the case of Exfin Shipping (1) Ltd., 2003 (153) ELT 534 (Tri.-Mumbai), placed on page 6 of the compilation, Hon'ble Tribunal has set aside suspension of the license on the ground that obligation of Custom Broker cannot extend to the private or personal conduct of the employee over which the Custom House Agent can have no control.

18.8 It is evident from the impugned order that Ld. Commissioner has nowhere rebutted the primary contention of appellant that they were never appointed to act as Custom Broker and have not filed any shipping bill or bill of entry in connection with the transactions amongst the above parties.

18.9 Hence, it is respectfully submitted that the Custom Broker license of appellant has been suspended without citing transaction of any Custom Broker business by the appellant. Consequently, Ld. Commissioner has exceeded jurisdiction vested to him in the capacity of the Licensing Authority.

18.10. Hon'ble Tribunal was pleased to direct Revenue to place on record Offence Report based on which Ld. Commissioner had passed Order-in-Original No. KND-CUSTM-000-COM-03- 2023-24 dated 28.07.2023 (placed at Page No. 30 of the appeal memorandum) for immediate suspension of the Custom Broker license.

18.11 On 15.09.2023, pursuant to the directions of Hon'ble Tribunal, Revenue placed on record copy of the following documents, both addressed to Ld. Commissioner of Customs, Kandla:

(a) Letter F. No. DRI/LD/U/856/INT-NIL/ENQ-15/2023/630 dated 07.07.2023 of Additional Director General, DRI, Ludhiana, and

(b) Letter F. No. DRI/AZU/GRU/Int-28/Aditya Exports/2022/VII/11465 dated 04.08.2023 of Additional Director, DRI, Gandhidham.

19. The order for immediate suspension of the Custom Broker License of appellant was passed by Ld. Commissioner by solely relying on basis of letter dated 07.07.2023 of Additional Director General, DRI, Ludhiana, as per (a) above, as duly noted in the impugned order. Reference to letter dated 04.08.2023 of DRI, Gandhidham contained in para 4.8 of the impugned order is irrelevant insofar as immediate suspension is concerned inasmuch as the said letter (copy of which was produced by Revenue on 15.09.2023 on the directions of Hon'ble Tribunal) deals with an ongoing inquiry commenced by DRI, Gandhidham against M/s. Aditya Exports in 2022 and hence, it has no relevance with the immediate suspension.

20. Attention was drawn to para 10 of the letter dated 07.07.2023 of Additional Director General, DRI, Ludhiana, which is as under:

> "10. The aforesaid actions of M/s. Krishna Shipping and Allied Services has directly resulted in smuggling of black pepper into India and has made M/s. Krishna Shipping and Allied Services liable to penalty u/s 112 and 114AA of the Customs Act, 1962. The misconduct committed by F-card holder Shri Pankaj Thakkar & CB firm M/s. Krishna Shipping and Allied Services, as narrated above, has prima facie rendered it unfit to transact any business in the Customs station."

21. Without prejudice to above, it was submitted that the averment contained in the letter dated 07.07.2023 of DRI is confined to one single Customs station only. At best, the recommendation of DRI was with regard to a singular customs station. Hence, the case would appropriately fall under Regulation 15 of CBLR,2018 dealing with prohibition.

21.1 As per Regulation 15 of CBLR,2018:

> "Notwithstanding anything contained in these regulations, the Principal Commissioner or Commissioner other than those referred to in regulation 7 may prohibit any Customs Broker from working in one or more sections of the <u>Customs Station</u>, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 10 in relation to work in that section or sections:
>
> Provided that <u>the period for which any Customs Broker may be prohibited from transacting business in one or more of the Customs Stations shall not exceed one month from the date of such prohibition:</u>

(Emphasis Supplied)

21.2 Therefore, Ld. Commissioner in passing the impugned order which has the impact of blanket suspension beyond one month across all the customs stations where appellant was transacting business, has misread the communication received from DRI. Owing to this, suspension of the Custom Broker license is not justified.

22. Learned AR pointed out the learned Commissioner in the impugned order while continuing with the suspension has relied upon various testimonial evidences as were part of the offence report of DRI and further submitted that there is no delay in taking action and that the investigation report was received on 07 July, 2023 and suspension order was passed on 28.07.2023 by the learned Commissioner and the learned Commissioner also considered various pleas through his order which is reproduced below:-

"4.3 I also find from the investigation report that " Krishna Shipping and Allied Services had even made IGST payments in respect of DTA imports made by M / s Cuthbert Winner LLP and M / s Cuthbert Ocean LLP. Both the firms are untraceable.

4.4 In the instant case, the investigations have clearly revealed that Shri Pankaj Thakker, Partner cum F-Card holder of Customs Broker firm M/ s Krishna Shipping & Allied Services (CB License No. KDLICHA/N431201) is the alleged mastermind and beneficiary of entire fraud in which Customs duty of Rs. 66.10 Crore was evaded in collusion with M / s Cuthbert Winner LLP and M / s Cuthbert Oceans LLP on 1596 MT of 'black pepper' removed into DTA at NIL rate of customs duty by claiming it to be of Afghanistan origin. DTA clearance to M / s Cuthbert Winner LLP and M / s Cuthbert Oceans LLP was made through M/s. Aditya Exports which is controlled and operated by Shri Pankaj Thakker only. Hence, CB has prima facie failed to follow the provisions of Regulation 17(9) of the CBLR, 2013 and Regulation 13(12) of CBLR 2018.

4.5 Custom Broker (M / s Krishna Shipping & Allied Services) replied that it is duly noted in the Order that CBLR,2018 would apply in this case (and not CBLR,2004 and/or CBLR,2013). Hence, the allegation regarding breach of Regulation 17 (9) of CBLR.2013 is without authority of law.

In this regard Regulation 17(9) of CBLR, 2013 read as under:

"The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."

Regulation 13(12) of CBLR 2018 read as under:

"The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment"

In view of above it is clear that Regulation 17(9) of CBLR-2013andRegulation 13(12) of CBLR 2018 are identical. Non mentioning of Regulation of CBLR 2018 and quoting the old provisions of CBLR 2013 does not Invalidate the Notice. The Supreme Court. in the case of Collector Of Central Excise, .. vs Pradyumna Steel Ltd, reported at (1996) (82) E.L.T.441(S.C.) in para no. 3 has held that

"It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power".

The Tribunal Mumbai in the case of SEAMEC Ltd Vs Commissioner of Customs (Imports) Mumbai, reported at 2018(364) E.L.T.440(Tri. Mumbai) in para no. 73 has held as under:

"Appellant's plea that Show cause notice intended confiscation under section 111(m) of the act instead of section 111(e) and 111(f) of the act is of no significance for the reason that there is no dispute that the officer who made the demand was competent to make demands under law as well confiscate the goods. Following the principle of law laid down in the case of J.K Steel Ltd. vs The UOI-1978(2)E.L.T.355(SC), if the exercise of power can be traced to a legitimate source, the fact that the same was purported to have been exercised different power does not vitiate the exercise of the power in question. This is a well-settled proposition of law. In this connection reference may usefully be made to the decisions of the court in P.Balakotaiah v. The Union of India, 1958 SCR 1052- AIR 1958 SC 232 and Afzal Ulah v. State of U.P., 1964 4 SCR 991-AIR 1964 SC 264. Apex Court in the case of Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd.-1996 (82) E.L.T.441 (S.C) has also held that it is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power".

In view of the above Judgments Regulation 13(12) of CBLR, 2018 is applicable to this case and the Custom Broker has clearly violated the same.

4.6 The Custom Broker submitted that action taken after 02 months did not satisfy the requirement of "immediate action" and relied upon decision in the case of Babaji Shivram Clearing& Carriers pvt ltd. Versus Union India reported at 2011(269) E.L.T 222 (BOM.) and requested to revoke the suspension by following the above decision. The Ratio of above decision is not applicable in the present case. In present case the investigation has been done by DRI, Ludhiana and the investigation report has been received by this office on 07.07.2023 and the OIO for suspension has been passed on 28.07.2023. There is no abnormal delay in the case. Hence the decision in the case of Babaji Shivram Clearing & Carries Pvt. Ltd. Vs Union of India is not applicable to this case.

4.7 The CB has replied that they have not acted as a custom broker in the present case and investigation against Shri Pankaj Thakkar is in his individual capacity and relied upon case law in the case of Sun Clearing Agency. However, the contention of CB is not correct. From the discussion in paras above, it is clear that e-mail of CB has been used and payment of IGST has also been made by CB. Accordingly, the case law relied upon by the CB is not applicable in present case."

23. Considered the rival submissions. We find that the suspension in the instant case has been done by *prima facie* considering the report of DRI

which was implemented as per the appellant with delay at least in two stages. The last statement in the matter was recorded on 28.04.2023, however the report was sent by DRI on 07.07.2023, which is beyond 30 days period prescribed by the Board, and circular 09/2019-Cus dated 8 April, 2010. Further there is delay in immediate suspension order as the same was passed after 15 days of the receipt of the offence report as pointed out and reproduced in para 19 *(supra) of the submission.* Learned Advocate has raised points including of the employee acting in the personal capacity and on behalf of appellant as in this case appellant was never engaged and also there is no case on merits as well as that the recommendation of DRI as per the text was of prohibition and not of suspension. At this stage, we find that the appreciation of evidence and the capacity in which the employee worked cannot be clearly established either way, till the investigation is still in progress. We appreciate that the Learned Commissioner has acted on *prima facie* appreciation of the evidence made available to him in the report published by the DRI. As far as delay involved is concerned. We however find merit in the submission made by the Learned Advocate he has sought to rely on the decision of Hon'ble High Court of Delhi in the matter reported in Leo Cargo Services V/s. Airport & General, New Delhi as reported in 2022 382 ELT 30 (D-H), which while relying on the various judgments and distinguishing the decision of Principal Commissioner of Customs Vs. Unison Cleaning P Ltd as reported in 2018 361 ELT 321Bom., held that Circular No. 09/2010 dated 08.04.2010, continues to be applicable as far as time lines are concerned even on coming into force of Custom Brokers Licensee Regulation, 2018 as much as they were under earlier Custom House Agent Licensing Regulations, as far as suspension is concerned. Following paras reproduced below make it clear that the time lines are mandatory and not directory and circular of the board is binding on the officers.

> *"14. It can be seen that the timelines as prescribed under various Regulations in CBLR, 2018, have been consistently*

held by the Courts as mandatory in nature. Each timeline is sacrosanct, and the idea of prescribing a time limit by statute becomes redundant if not adhered to. Therefore, it is not just the overall timeline of 270 days (as set forth in the Circular No. 9/2010, dated 8-4-2010) that needs to be followed, but also each and every timeline as prescribed in the CBLR, 2018.

14.1 Timelines cannot be overlooked by Revenue by citing reasons on merits. We are bound by the decisions, as discussed above, passed by the Coordinate Benches of this Court and other High Courts, which state that each timeline is sacrosanct.

14.2 We are unable to persuade ourselves to agree with the decision of the Bombay High Court in the Principal Commissioner of Customs v. Unison Clearing Pvt. Ltd. (supra) that where a reasonable explanation is given for such delay and were accounted for, the delay may be condoned. In any event, in the present case, the facts are distinguishable. The Revenue has nowhere in their pleadings before the CESTAT and neither in their Reply affidavit filed in this present appeal given any reasonable explanation for the delay or non-compliance of the timeline prescribed under sub-regulation (5) of Regulation 17 of CBLR, 2018. Revenue is bound to follow the settled law and statutory provisions, including their timelines. Once the limitation is prescribed clearly therein, it cannot be stated that because of other issues, this mandatory requirement can be ignored."

23.1 Further, we also find that the matter regarding time lines as well as Board circular and it is applicability after coming into force of CBLR -2018 were also considered in 2020 (371) ELT 685(Madras) in the matter of M/s. KTR Logistics Solutions P Ltd., in which the Hon'ble High Court considered various decisions which were available in favour of the party as well as in favour of department. Regarding whether conditions and time lines prescribed were mandatory or declaratory Following para which are relevant are reproduced below:

"5. *The crux of the contentions of the petitioners is as follows :*

(a) (i) The period of limitation prescribed in the relevant Regulation for doing each act is mandatory and not directory.

(ii) Even though the Regulations do not provide the consequence event, if the limitation period is not adhered to, the nature of business being done and the action initiated against the petitioners would show that such consequences are obvious and very serious in nature affecting the business and livelihood of the petitioners in toto. 46

(iii) When substantial right is affected, the Authorities are bound to comply with the time limit.

(iv) The order of suspension cannot be perpetuated by not passing the follow up actions within the time prescribed. Therefore, if the time prescribed is not mandatorily followed, the order of suspension would become perpetual.

(v) Since irretrievable loss is being caused by not passing the proceedings within the time frame, interest of the petitioners are very much affected. Therefore, the limitation period is mandatory.

(b) The Division Bench order passed by this Court in W.P. (MD) No. 11986 of 2018, etc., dated 19-7-2018, holding time prescribed under the provision under Section 14 of the SARFAESI Act, cannot be applied to the present case by the Revenue, since the facts and circumstances are different therein and the parties therein are not affected by any consequences. Moreover, the said order was issued taking note of the public interest.

(c) Board Circular No. 9/2010, which was issued before framing the Regulation clearly stipulated at Paragraph 7.1 overall time limit of 9 months to be followed in completing the proceedings.

***6.** In support of the above contentions, the Learned Counsel for the petitioners relied on the following decisions :*

(i) Order made in W.P. No. 26923 and 26934 of 2018, dated 22-11-2018;

(ii) 2016 (338) E.L.T. 347 (Del. - DB), Impexnet Logistic v. Commissioner of Customs (General)

(iii) 2014 (310) E.L.T. 673 (Mad DB), Commissioner of Customs (Seaport Import), Chennai v. CESTAT, Chennai;

(iv) a Division Bench decision of this Court made in CMA No. 730 of 2016 dated 13-10-2017.

(v) 2016 (340) E.L.T. 119 (Del), Overseas Air Cargo v. CC;

(vi) 2016 (337) E.L.T. 41 (Del), Indian Carrier P. Ltd. v. CC.

7. *Per contra, the contentions of the Learned Counsels appearing for the respondents are as follows :*

(a) The limitation prescribed under the relevant regulations is not mandatory, since no consequence follows for not following the time limit. In other words, the relevant regulations do not stipulate any consequence, if a particular act is not done within the time limit prescribed in the regulation. Therefore, the time limit prescribed is only directory and not mandatory as claimed by the petitioners. The power to issue regulations emanates under Section 146 of the Customs Act, which deals with the issuance of license to the petitioners. The said provision does not stipulate any time limit. The regulations are delegated legislation and therefore, they cannot go beyond the parent Act. When the parent Act, does not prescribe any time limit, any stipulation made for time limit in the regulations cannot go beyond the parent Act. The petitioners have violated the conditions of license and therefore, they cannot be the persons affected by the impugned proceedings. It is not a fundamental right to get the license and do the business. Only when the consequence is spelt out in the regulations itself, the time limit prescribed could be treated as mandatory. In W.P. No. 27948/2019, the enquiry report was made ready on 23-5-2018 within 90 days from the date of the show cause notice. Because of the petitioner's non-cooperation, the time schedule could not be adhered to. Regulations are only procedural laws and therefore, prescription of time limit therein is only directory. In W.P. No. 31383/2018, the time limit is fully complied with. The suspension order was issued within one month from the date of receipt of the offence report. The continuation of the suspension order was issued on 20-11-2018. Therefore, the prayer sought for in W.P. No. 31383/2018 challenging the suspension has become infructuous in view of the issuance of the show cause notice on 20-12-2018 which is challenged in the subsequent W.P. No. 22154/2018. In W.P. No. 18041/2018, the offence report was received by the respondent on 13-11-2018 and not on 16-11-2018 as contended by the petitioner. The challenge made in this writ petition against the show cause notice is premature and therefore, the writ petitions are not maintainable.

8. *In support of the above contentions, the Learned Counsel relied on the following decisions :*

(i) 2018 (362) E.L.T. 947 (Cal.), OTA Fallons Forwarders P. Ltd. v. UOI;

(ii) Manu/WB/0814/2016, Asian Freight v. Principal Commissioner;

(iii) 2018 (361) E.L.T. 321 (Bom. DB), Principal Commissioner v. Unison Clearing P Ltd.;

(iv) the Division Bench decision of this Court made in W.P. (MD) No. 11986 of 2019, etc., in the case of C. Bright v. District Collector, Nagercoil, dated 19-7-2019.

9. *Heard the Learned Counsels for the petitioners and the Learned Counsels for the respondents. Perused the materials placed before this Court.*

10. *These writ petitions are filed by the holders of Customs Broker license issued under the relevant Customs Broker Licensing Regulations. In these writ petitions, they have challenged the respective order of suspension/the show cause notice issued with a proposal to revoke the order of suspension/order imposing penalty under the relevant regulations. The impugned proceedings were passed/issued based on certain allegations that the respective writ petitioners have violated the terms of the license issued to them under the relevant regulations. The facts and circumstances warranting issuance of impugned proceedings differ from case to case. Since these writ petitions are filed by questioning the very jurisdiction of the Authorities concerned in issuing the impugned proceedings beyond the time prescribed under the relevant provisions for doing each act, the factual allegations made against these petitioners warranting issuance of impugned proceedings are not being dealt with in these writ petitions, as this Court is called upon to decide as to whether the limitation period prescribed under relevant regulations for doing each act commencing from the issuance of an order of suspension up to passing of a final order in pursuant to issuance of show cause notice, is mandatory, as claimed by the petitioner or directory, as claimed by the respondents. Thus, this Court confines the discussion of the matter only with the above issue by referring to the relevant facts and circumstances and the relevant regulation touching upon the said issue alone.*

11. *Before answering the abovesaid question, it is better to understand the provisions under the Customs Brokers Licensing Regulations, 2013 and 2018, which are relevant for the present case. There is no dispute to the fact that the relevant provisions under both regulations are parimateria. Thus, it is seen that Regulation 16(1) of 2018 Regulations and 19(1) of 2013 Regulations are parimateria with each other. For the sake of convenience, I refer 2013 regulations. The regulation 19 deals with the suspension of the customs broker license. It reads as follows :*

> *"**19. Suspension of licence.** — (1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending contemplated.*

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20."

12. *Regulation 17(1) of 2018 Regulations is similar to Regulation 20(1) of 2013 Regulations. Likewise, Regulation 17(5) and Regulation 17(7) of 2018 Regulations are similar to Regulation 20(5) and 20(7) of 2013 Regulations. Thus, for better clarity, Regulation 20 of 2013 regulations in full is extracted hereunder :*

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 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."

13. *Perusal of the above Regulations would show that the Authority, who suspends the license/revokes the license/imposes penalty, should act/issue certain proceedings within the time stipulated therein. Under 19(1) of 2013 Regulations, the Commissioner of Customs is empowered to suspend the license in an appropriate case, where immediate action is necessary and where an enquiry against such agent is pending or contemplated. It is further seen that if a license is* *suspended under sub-regulation (1) of Regulation 19, the Commissioner shall give an opportunity of hearing to the customs broker within 15 days from the date of suspension of license and pass such order, as he deems it fit, either revoking the suspension or continuing it within 15 days from the date of hearing granted to such customs broker. In case, the Commissioner passes an order for continuing the suspension, further procedure thereafter shall have to be followed as provided under Regulation 20.*

14. *Under 20(1) of the Regulations, the Commissioner shall issue a notice to the Customs Broker within a period of 90 days from the date of receipt of an offence report, stating the grounds on which he proposes to revoke the license or impose penalty. The Customs broker should submit a written statement of defense within 30 days from the date of receipt of the said show cause notice. Regulation 20(2) contemplates that on receipt of the written statement from the customs broker within the time stipulated, the Commissioner of Customs may direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to conduct an enquiry. Regulation 20(5) stipulates that at the conclusion of the enquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the enquiry and after recorded his findings thereon, submit the said report within a period of 90 days from the date of issue of the show cause notice. Thus, it is evident that the 90 days prescribed under sub-regulation (5) of Regulation 20, is not only for preparing the report and also for submitting the same before the Commissioner of Customs within such time. Regulation 20(7) contemplates that the Commissioner of Customs, after considering the report of the enquiry and the representation of the customs broker, shall pass an order either revoking the suspension of the license or revoking the license of the customs broker or imposing penalty, within 90 days from the date of submission of the report by the enquiry Officer. It is further contemplated therein that no order for revoking license shall be passed, unless an opportunity of hearing is given to the customs broker in person by the Commissioner of Customs.*

15. *Perusal of the above Regulations thus would show that at every stage, a time limit is fixed for the authorities concerned to act. The question as to whether the time limit prescribed in the regulations is mandatory or not, has been considered by this Court in W.P. Nos. 26923 and 26934 of 2018 (CarewellShipping Pvt. Ltd. v. Commissioner of Customs) dated 22-11-2018. This Court, after considering the scope of the relevant regulation and the time frame fixed therein and also after following the Division Bench decision of the Delhi High Court in a case reported in 2016 (338) E.L.T. 347, (Del), Impexnet Logistic v. Commissioner of Customs*

(General) and the Division Bench decision of this Court made in CMA No. 730 of 2016 dated 13-10-2017, found that the time limit fixed is mandatory and that the Enquiry Report filed beyond the period of 90 days cannot be considered as a valid report and consequently, further proceedings cannot be allowed to go as a follow up action. The relevant findings rendered at Paragraphs 7 to 12 of the said order of this Court read as follows :

> *"7. The challenge made in these two writ petitions is against the show cause notice and the order of suspension of the petitioner's customs broker license. The prime contention of the petitioner against the show cause notice is that the third respondent/Inquiry Officer has failed to file the report within 90 days from the date of issuance of the show cause notice and therefore, the entire proceedings are vitiated. There is no dispute to the fact that the show cause notice was issued on 13-4-2018. It is also not in dispute that the petitioner filed their reply and participated in the inquiry on 25-4-2018. However, the third respondent prepared the report only on 14-8-2018, which is evident from the perusal of the said report itself, made available in the typed set of papers. Therefore, it is clear that the third respondent has prepared the said report on 14-8-2018, which is undoubtedly beyond the period of 90 days from the date of issuance of the show cause notice. At this juncture, it is relevant to quote Regulation 20(5) of the said Regulations, which reads as follows :*
>
> *"**20. Procedure for revoking licence or imposing penalty.***
>
> *...(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)."*
>
> *8. Perusal of the above Regulation clearly indicates that such report on conclusion of the inquiry shall be prepared and submitted within a period of 90 days from the date of issue of notice under sub-regulation (1). It is contended by the respondents that the time stipulated under Regulation 20(5) for filing such report is only directory and not mandatory. The very same issue was considered by the Division Bench of the Delhi High Court in a case reported in 2016 (338) E.L.T. 347 (Del), Impexnet Logistic v. Commissioner of Customs (General). The Delhi High Court at Paragraph Nos. 6 to 10 has observed as follows :*

"6. From the list of dates submitted by the Respondent, it appears that an enquiry report dated 4th March, 2015 was forwarded by the Inquiry Officer only on 10th March, 2015 which was 13 months after the suspension of the licence. It is thereafter that the impugned order dated 1st June, 2015 was passed after affording the petitioner an opportunity of being heard.

7. It is plain that in the case there has been a violation of the time-limits set out in Regulation 20 of the CBLR (corresponding to Regulation 22 of the CHALR) in the decision dated 12th May, 2016 in Cus. AA 25/2015 (Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General) [2016 (337) E.L.T. 41 (Del.)] this Court held :

"6. The time limits in the CHALR 2004 for issuance of the SCN to the CHA licence holder and completion of the inquiry within 90 days of issuance of such SCN are sacrosanct. The aforesaid time limits were engrafted into Regulation 22 of the CHALR, 2004 by a Notification No. 30/2010-Cus.(N.T.), dated 8th April, 2010. Simultaneously, the CBEC issued Circular No. 9/2010, dated 8th April, 2010 clarifying the procedures governing the suspension and revocation of CHA licence. In Para 7.1 of the said Circular, it was noted as under :

"7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of Issue of Show Cause Notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty-five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations."

7. This Court has consistently emphasised the mandatory nature of the aforementioned time limits in several of its decisions. These include the decision in Schankar Clearing & Forwarding v. C.C. (Import & General) 2012 (283) E.L.T. 349 (Del.), the order dated 25th April, 2016 passed by this Court in Customs Appeal No. 14/2016 (Commissioner of Customs (General) v. S.K. Logistics) and the order dated 29th April, 2016 in W.P.(C) No. 3071/2015 (Sunil Dutt v. Commissioner of Customs

(General) New Customs House). The same position has been reiterated by the Madras High Court in Sanco Trans Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai - 2015 (322) E.L.T. 170 (Mad.) and Commissioner v. Eltece Associates - 2016 (334) E.L.T. A50 (Mad.)."

8. Recently by an order dated 24th April, 2016 in W.P. (C) No. 1734/2016 [HLPL Global Logistics Pvt. Ltd. v. The Commissioner of Customs (General) [2016 (338) E.L.T. 365 (Del)] this Court reiterated that the time-limits in Regulation 20 of the CBLR/Regulation 22 of the CHALR are sacrosanct.

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December, 2013, i.e. beyond the mandatory period of 90 days from the date of receipt of the offence report by the Respondent, i.e. 31st January, 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN.

10. Consequently, the Court set asides the impugned order dated 1st June, 2015 passed by the Respondent revoking the licence of the petitioner."

9. The other decision relied on by the petitioner is the decision made in CMA No. 732 of 2016, dated 13-10-2017 by the Division Bench of this Court. In the said decision, the Division Bench, after following the Delhi High Court decision reported in 2016 (337) E.L.T. 41 (Del), Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General), has observed at Paragraph No. 42 as follows :

"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."

10. Perusal of the above said decisions of this Court and the Delhi High Court would show that the time stipulated under the Regulations for issuing the show cause notice as well as the filing report is not directory and on the other hand, it is mandatory. No other contra decisions are placed before this Court by the Learned Counsel for the respondents. Even the decision, which he sought to rely made in W.P. Nos. 19312 and 19313 of 2016, dated 13-7-2016, is not relevant to the present facts and circumstances, since in that case this Court has considered the question as to whether the respondent *therein had sufficient power to sustain the license invoking Regulation 19(1) of the Regulations. In this case, the petitioner has raised the issue on the time limit fixed under Regulation 20(5) and not 19(1). When the facts placed before this Court are very clear that the report itself was prepared and filed beyond 90 days as statutorily required and when the decision of this Court and the Delhi High Court clearly indicate that such time limit fixed is mandatory, this Court is of the view that the report so filed beyond the period of 90 days cannot be considered as a valid report and consequently further proceedings cannot be allowed to go as a follow up action.*

11. Regulation 20(5) contemplates that the Commissioner shall furnish the copy of the report to the customs broker and shall require the customs broker to submit their reply within 30 days against the said report. Regulation 20(7) contemplates that the Commissioner shall after considering the report of the inquiry officer and the representation of the broker, pass such orders, as he deems it fit either revoking the suspension order or imposing penalty within 90 days from the date of submission of the report. As this Court has already found that the very filing of the report was beyond the period of 90 days as required under Regulation 20(5) and thus taken the view that the Commissioner of Customs is not entitled to proceed further under Regulations 20(6) and 20(7) as stated supra, the impugned show cause notice cannot have legs to stand any more, as naturally it has to fall on its own, in view of the lapse committed by the Officers as stated supra, as the inquiry report, pursuant to the issuance of the show cause notice, was admittedly filed beyond the prescribed period of limitation.

12. It is claimed by the Revenue that the petitioner is an habitual offender and therefore, the proceedings are rightly initiated against them. This Court is not inclined to go into such allegation against the petitioner, as this Court is inclined to interfere with the impugned proceedings only on the ground of limitation, as discussed supra. If the petitioner is an habitual offender, as alleged by the Revenue, it is not known as to what prevented the concerned authorities in proceeding against the petitioner by following the mandatory requirements contemplated under law. When there is a lapse on the part of the concerned authority in not making the report within the time stipulated which prevents further proceedings, the Revenue has to blame itself for such lapse, especially when the Courts have held that the period of limitation prescribed under the Regulation, as discussed supra, is mandatory. Therefore, it is for the authorities to be more *vigilant in complying with the mandatory requirements under law, while proceeding against an offender without giving room for any lapse even on technicalities."*

16. *It is stated before this Court that the above order has not been challenged by the Revenue and on the other hand, the same has been given effect to.*

17. *It is further seen that before introducing the Regulations, Circular No. 9/2010, dated 8-4-2010 was issued by the Central Board of Excise and Customs, New Delhi, wherein at Paragraph No. 7.1, it is stipulated that an overall time limit of 9 months is given from the date of receipt of offence report by prescribing time limits at various stages of issue of show cause notice, submission of enquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs and for passing an order by the Commissioner of Customs. The said Circular No. 9/2010 was considered by the Division Bench of this Court in a case reported in 2014 (310) E.L.T. 673 (Mad), Commissioner of Customs (Sea Port Import) v. CESTAT, Chennai, wherein the Division Bench has observed that it is not open to the Revenue to take a contra stand in respect of the time limit prescribed, since the Board Circular issued by the Central Board of Excise and Customs is binding on the Revenue.*

(Emphasis Supplied)

18. *In 2017 (348) E.L.T. 640 (Mad), Commissioner of Customs v. MKS Shipping Agencies Pvt. Ltd., the Division Bench of this Court has observed that the Customs House Agents Licensing Regulation is having statutory force and that the 90 days prescribed under Regulation 22(1) is mandatory in nature and cannot be treated as directory.*

19. *Another Division Bench decision of this Court in an order made in CMA No. 730 of 2016, dated 13-10-2017, while answering the question whether or not the belated show cause notice issued beyond 90 days would be fatal to the entire proceedings, has observed that the limitation prescribed is mandatory and therefore, the mandatory requirement of the limitation cannot be ignored. In order to answer the said question, the Division Bench has elaborately considered various decisions rendered by various Courts and thereafter, has come to the above conclusion.*

20. *Likewise, the Delhi High Court in the decisions reported in 2016 (340) E.L.T. 119, Overseas Air Cargo v. CC and 2016 (337) E.L.T. 41, Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General), has also taken the similar view.*

21. *In W.P. No. 27948 of 2017, it is contended by the Learned Counsel for the Revenue that the Enquiry Report dated 23-5-*

2018 was made within 88 days from the date of show cause notice. Therefore, it is contended that the time limit is adhered to. On the other hand, it is stated by the Learned Counsel for the petitioner that though the said report was made ready on 23-5-2018, admittedly, it was submitted before the Authority concerned only on 12-6-2018 and therefore, the very submission of the report itself is beyond the period of 90 days. I am in agreement with the submission made by the Learned Counsel for the petitioner in view of the fact that Regulation 20(5) contemplates not only preparing a report of the enquiry and also submitting the same within a period of 90 days from the date of issuance of the show cause notice. Therefore, it cannot be said that preparation was made in time and thus, it satisfies Regulation 20(5).

22. *The decision of the Apex Court made in Salem Bar Association case reported in (2005) 6 SCC 344, is also sought to be relied by the Revenue to contend that the time limit prescribed in these regulations are directory. In the above said case, the question before the Apex Court is with regard to the filing of the written statement under Order 8 Rule 1 CPC. Therefore, it is evident that facts, circumstances and the relevant provision of law are not one and the same before this Court as well as the case in Salem Bar Association. In any event, as the very same regulations were considered by this Court and decided in very many cases as discussed supra, the Revenue is not justified in relying on Salem Bar Association case.*

23. *Mr. V. Sundareswaran, Learned Counsel for the Revenue relied on the Learned Single Judge decision of the Calcutta High Court Manu/WB/0814/2016, Asian Freight v. Principal Commissioner, to contend that the time limit is only directory. He also relied on the Division Bench decision of the Bombay High Court reported in 2018 (361) E.L.T. 321, Principal Commissioner v. Unison Clearing P. Ltd., in support of his submission that the time limit is only directory as non-compliance of the provision is not visited with some penalty. In view of the decisions made by this Court as extracted supra and more particularly, decision of this Court made in Carewell Shipping Private Limited as discussed supra arising out of the same issue, which has become final and not questioned, I find that the above decisions taking contra view not having a binding nature on this Court will not help the respondents.*

24. *Further, a Learned single Judge decision of the Calcutta High Court reported in 2018 (362) E.L.T. 947, OTA FalloonsForwarders Pvt. Ltd. v. Union of India, is relied on, wherein the Learned Judge has observed that the time limit prescribed in the Regulations are not mandatory, since the consequence of non-adherence to the time limit has not been provided in the regulations.*

25. *A Division Bench decision of this Court made in W.P. (MD) No. 11986 of 2018, etc., dated 19-7-2018, (wherein I am one of the party to the Bench) is also heavily relied on by the respondents in support of their contention that the time limit prescribed is only directory by applying the consequence of non-compliance test.*

26. *Let me now consider the issue as to whether there is no consequence followed for not complying with the time limit prescribed under the present Regulations, as contended by the respondents.*

27. *No doubt, under the Regulations, it is not specifically stated as to what would follow as a consequence if each and every act contemplated under the Regulations is not done or completed within the prescribed time limit. In my considered view, merely because the Regulation does not prescribe or spell out expressly or specifically as to what would be the consequence, there could be no presumption that there is no consequence at all in these cases. On the other hand, the consequence is obvious and can be inferred easily in these cases. Needless to state that suspending a license pending enquiry cannot be prolonged endlessly without completing the other procedures as a follow up action, within the time prescribed therein. Otherwise, the suspension of the license gets perpetuated. This cannot be the intention or the object behind stipulating the time limit. Therefore, a broker, whose license is suspended and is not visited with any further order within the time limit prescribed, is undoubtedly deprived of his business endlessly and thus, such hardship detrimental to the interest of the licensee is to be treated and viewed as consequence. Likewise, the revocation of the license or imposing penalty should also be done within the time prescribed so that the customs house agent will be in a position to know where does he stand.*

28. *Needless to state that the show cause notices are issued after suspending the license and therefore, the time limit prescribed at each stage needs to be complied with mandatorily, if not the consequence that would follow is the continuation of the suspension of his license thereby affecting/paralyzing the business activities of the licensee. These consequences, though not mentioned in the Regulations, are however evident apparently on the face of the facts and circumstances. Therefore, it cannot be said that there is no consequence for non-adherence to the time limit and therefore, such time limit is only directory and not mandatory."*

23.2 In view of the foregoing and also the fact that no contrary decision by Hon'ble High Court of Gujarat has been brought to our notice by either side on mandatory and declaratory nature of the time lines prescribed as well as to indicate that Board Circular No/. 09/2010-Cus at 08.04.2010 has been withdrawn or superseded, we have no difficulty in observing as deduced from decisions above that time lines are mandatory conditions and need to be observed including those prescribed in the Board Circular of 09/2010-Cus as indicated above. In the instant case since there is a breach of time lines prescribed by the Board, we therefore hold that in the facts of the case the suspension done is bad in law. We, therefore order revocation of suspension. At this stage we are not expressing any views on merits as well as further legal points raised by the appellant, since in any case, we have upheld their relief entitlement.

24. Appeal allowed with consequential relief.

(Pronounced in the open court on 06.10.2023)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

PRACHI