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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10659 of 2023- DB

(Arising out of OIA-MUN-CUSTM-000-COM-09-23-24 dated 11/08/2023 passed by Commissioner of Customs- Mundra)

ASHAPURA SHIPPING AGENCY ....**Appellant**
Plot No 8/9 Bunder
Road Opp ST Station
Mundra Kutch Gujarat- 370421

VERSUS

Commissioner of Customs- Mundra Customs ....**Respondent**
Office Of The Pr Commissioner Of Customs,
Customs House Mundra. Kutch Mundra Prot And
Special Economic Zone, Mundra Kachchh, Gujarat- 370421

APPEARANCE:
Ms S Mathur, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10273/2024

DATE OF HEARING: 11.10.2023
DATE OF DECISION: 30.01.2024

RAJU

This appeal has been filed by M/s. Ashapura Shipping Agency a Customs Broker against revocation of CB license forfeiture of the security deposit and imposition of penalty under Regulation 18 of CBLR 2018.

2. The Learned Counsel for the appellant pointed out that the time limits prescribed in the Customs Brokers Licensing Regulation, 2018 have not been followed. She pointed out that Regulation 17 (1) requires the Show cause noticed to be issued within 90 days from the receipt of office offence report. However, in the instant case the show cause notice has been delayed by 14 days over and above the 19 days limit prescribed in Regulation 17 (1). The regulation 17 (5) requires enquiry report to be prepared within the 90 days from the date of show cause notice.

2.1 It has been argue that there is the delay of 66 days over and above the 90 days time limit prescribed under Regulation 17 (5). It was further pointed out that Regulation 17 (7) requires the final order to be passed within 90 days from the date of enquiry report.

2.2 It was argued that there was a delay of 31 days over and above the 90 days limit prescribed Regulation 17 (7) of the CBLR, 2018. The learned

Counsel argued that the time limits prescribed under the Customs Broker Licensing Regulation, 2018 are mandatory and failure to follow the said time limits vitiates the entire proceeding.

2.3 The learned Counsel further pointed out that during the enquiry no statement of Shri Ashok Bhanushali the main partner of the appellant firm was recorded. The enquiry report suggests that summons dated 12.04.2012, 14.04.2022 and 12.5.2022 were issued to Shri Ashok Bhanushali but he failed to appear. Learned Counsel Pointed out that only two summons were received through e-mail and Shri Ashok Bhanushali failed to appear as his Brother-in-law was suffering from cancer at advance stage and was hospitalized.

2.4 It was argued that the enquiry was conducted in most biased manner. Learned Counsel pointed out that the enquiry was conducted in a summary manner. The enquiry report does not engage in any examination in chief non-cross examination is carried out. The enquiry report also does not independently examine any documents.

2.5 It was argued that the enquiry officer has simply reproduced the provisions of law and concluded the charges leveled against the appellant as proved without examining facts or law. Learned counsel relied upon the following decisions:-

- Commissioner of Customs (General) Vs. Atharva Global Logistics- 2016 (338) ELT 682 (Del.)
- Sabin Logistic Pvt. Ltd. Vs. Commissioner of Customs, Chennai –VIII – 2019 (367) ELT 200 (Mad.)
- Parthiv Vijaykumar Dave Vs. Commissioner of Customs -Hon'ble High Court of Gujarat in R/Tax appeal No. 146 of 2022 dated 10.02.2022
- Syed Jameel Uddin Vs. Commissioner of Customs, Hyderabad- 2019 (369) ELT 1053 (Tri.- Hyd.)
- Commissioner of Customs, Hyderabad Vs. Syed Jameel Uddin – 2020 (373) ELT 317 (Telangana)
- G N D Cargo Movers Vs. Commr. of (General), New Delhi – 2017 (357) ELT 1184 (Tri. Del.)
- Exim Cargo Services Vs. Commissioner of Customs (General) – 2019 (368) ELT 1024 (Del.)
- GSP Shipping & Logistics Agency Vs. Commr. Of Cus. (Airport & Administration), Kolkata- 2021 (376) ELT 527 (Tri.- Kolkata)
- Sadanand Chaudhary Vs. Commr. Of Cus. (G) New Delhi – 2018 (363) ELT 1018 (Tri.-Del.)

- R S R Forwarders Vs. Commr. of cus., New Delhi – 2018 (364) ELT 541 (Tri.-Del.)
- Perfect Cargo & Logistics Vs. C.C. (Airport & General), New Delhi – 2021 (376) ELT 649 (Tri.- Del.)

3. Learned AR relied on the impugned order.

4. We have considered rival submissions.

4.1 We find that for all the primary ground traced by the appellant relate to failure of department to follow the time limits prescribed under CBLR, 2018. The following are the various time limits, which the revenue has failed to followed;-

Relevant Regulation of Customs Brokers Licensing Regulations, 2018	Statutory Time Limit prescribed under respective Regulation	Actual date of receipt of office report, issuance of Show-cause Notice and issuance of impugned order.	Delay, beyond the statutory time limit mentioned in col. (2)
(1)	(2)	(3)	(4)
17 (1)	Show-cause Notice to be issued within 90 days from the receipt of report office	Office Report dtd. 21/07/2022 Show-cause Notice dtd. 04/11/2022 **Was required to be issued on or before 21/10/2022**	Delay after 90 days' time limit is - 14 days
17(5)	Inquiry Report to prepared within 90 days from the date Show-cause Notice	Show-cause be Notice dtd. 04/11/2022 Inquiry of Report dtd. 11/04/2023 **Was required to be passed on or before 04/02/2023**	Delay after 90 days' time limit is - 66 days
17(7)	Order of Revocation (Impugned Order) to be passed within 90 days from the date of Inquiry Report.	Inquiry Report dtd. 11/04/2023 Order of Revocation (Impugned Order) dtd. 11/08/2023 **Was required to be passed on or before 11/07/2023**	Delay after 90 days' time limit is - 31 days

There have been various decisions on the issue whether the time limits prescribed in the CBLR, 2018 are directory or mandatory in nature.

4.2 The coordinate bench of Tribunal in the case of Krishna Shipping and Allied Services vide final order dated 06.10.2023 has examined these decisions and come to the conclusion that the time limits prescribes are mandatory. In the case of Krishna Shipping and Allied Services (Supra) following has been observed:-

> *"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."

4.3 The above decision examines the decision of Tribunal and of Hon'ble High Courts on this aspect. After examine all these decisions it comes to conclusion that time limits prescribes are mandatory. In view of above, we find that the time limits prescribed in the CBLR, 2018 have not been followed in this case as an apparent from table in Para 4.1 above. In these circumstances cannot be continued as the actions of revenue under CBLR are barred by limitation prescribed by CBLR, 2018.

5. The Appeal is consequently allowed.

(Pronounced in the open court on 30.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha