CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL,

NEW DELHI

COURT NO. 1

Customs Appeal No. 52787/ 2019

(Arising out of Order-in-Original No. 01/COMMR/CUS/IND2019 dated 05.11.2019 passed by the Commissioner of CGST & Central Excise, Indore)

RISHAD SHIPPING AND CLEARING AGENCY LTD **APPELLANT**
602, Silver Arc Plaza, 20/1, New Palasia
Indore 452001.

VS.

COMMISSIONER OF CENTRAL EXCISE, AND CENTRAL GOODS AND SERVICE TAX, manic **RESPONDENT**
Bagh Palace, Post Bag No. 10, Indore (MP).

Present for the Appellant : Shri Rohit Choudhary & Ms.Preeti Khiwani, Advocates
Present for the Respondent **:** Shri Rakesh Kumar, AR

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION : 04/02/2020

FINAL ORDER NO. 50427 /2020

PER JUSTICE DILIP GUPTA:

The order dated 05 November, 2019 passed by the Commissioner (Customs) Indore[1] for continuation of the suspension of the Customs Broker License[2] of the Appellant has been assailed in this appeal.

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1 the Commissioner
2 the Licence

2. It is stated that this license had been initially suspended by order dated 15 October, 2019 under the provisions of regulation 16(1) of the Customs Brokers Licensing Regulations, 2018[3] and the order dated 5 November, 2019 continues the suspension of the license under regulation 16(2).

3. The issue that arises for consideration in this appeal is whether the order dated 05 November, 2019 by which the suspension of the license has been continued under regulation 16(2) would continue to operate, even if a notice contemplated under regulation 17(1) is not issued within a period of 90 days from the date of receipt of the offence report.

4. The appellant was granted a Broker License by the Commissioner of Customs at Indore and was transacting business at Mumbai Customs Zone. This License was to continue upto October, 2024. It transpires that on 05 February, 2019, M/s. Opera enterprises and M/s. Om Traders filed two separate Bills of Entry and on 07 February, 2019, information regarding mis-declaration of goods in the said Bills of Entry was reported. Thereafter, on 06 August, 2019, a show cause notice was issued under section 124 of the Customs Act, 1962[4] to an employee of the appellant and an order dated 16/18 September, 2019 was issued by the Principal Commissioner of Customs at Mumbai for withdrawal of the permission granted to the appellant to transact business at Mumbai Customs Zones with immediate effect. This

3 2018 Regulations
4 Customs Act

order together with a copy of the show cause notice dated 6 August, 2019 was communicated to the Commissioner of Customs at Indore by letter dated 23 September, 2019 which was received by the Commissioner of Customs at Indore on 27 September, 2019. Thereafter, by order dated 15 October, 2019, the Commissioner of Customs at Indore, in exercise of the powers conferred by regulation 16(1), suspended the license of the appellant with immediate effect. The appellant was also granted an opportunity of being heard on 22 October, 2019 in terms of regulation 16(2). It was after hearing the appellant that the Commissioner at Indore by order dated 05 November, 2019 directed for continuation of the suspension of the License of the Appellant. This appeal has been filed to assail the said order dated 05 November, 2019.

5. Shri Rohit Choudhary, learned Counsel appearing for the appellant has submitted that the license issued to the appellant would automatically stand revived as the mandatory provisions of regulation 17 (1) have not been complied with inasmuch as the notice contemplated under regulation 17(1) was not issued within a period of 90 days from the date of receipt of the offence report. In support of this submission, reliance has been placed upon judgments of the Delhi High Court and the Madras High Court, to which reference shall be made at the appropriate stage.

6. Shri Rakesh Kumar, learned Authorized Representative of the Department has, however, submitted that the license would

not automatically stand revived since the provisions of regulation 17(1) are not mandatory in nature. In support of this submission, learned Authorized Representative of the Department has placed reliance upon judgments of the Bombay High Court and the Calcutta High Court as also upon a decision of this Tribunal.

7. In order to appreciate the contentions advanced by the learned Counsel of the appellant and the learned Authorized Representative of the Department, it would be necessary to reproduce the relevant provisions of the 2018 Regulations.

8. Regulation 3 provides that no person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import or export of goods, including work relating to audit at any Customs Station unless such person holds a license granted under these regulations. Regulation 7 deals with grant of license. Regulation 10 deals with obligations of Customs Broker.

9. Regulation 14 deals with revocation of license or imposition of penalty and is reproduced below:

> **"14. Revocation of licence or imposition of penalty**. — The Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds, namely :-
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> (a) failure to comply with any of the conditions of the bond executed by him under regulation 8;
> (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

> (c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;
> (d) adjudicated as an insolvent;
> (e) of unsound mind; and
> (f) convicted by a competent court for an offence involving moral turpitude or otherwise."

10. Regulation 16 deals with suspension of license and is as follows:-

> "**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 :
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> Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.
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> (2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deemsfit 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 :
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> Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17."

11. Regulation 17 deals with the procedure for revoking license or imposing penalty. The relevant portions of the regulation necessary for the purpose of deciding this appeal are as follows:-

> "**17. Procedure for revoking license or imposing penalty.** — **(1)** The Principal Commissioner or Commissioner of

Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(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) xxxxxxxxxxxxx

(4) xxxxxxxxxxxxx

(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 Principal Commissioner or 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 Principal Commissioner or 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 license of the Customs Broker 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 Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(8) xxxxxxxxxxxxxxxxx

> **Explanation.** — Offence report for the purposes of this regulation means a summary of investigation and *prima facie* framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G-card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."

12. Regulation 19 provides that a Customs Broker who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Customs Act before this Tribunal.

13. As noticed above, regulation 16(1) provides that notwithstanding anything contained in regulation 14, the 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. In the present case, the license of the appellant was initially suspended by order dated 15 October, 2019 under regulation 16(1). Paragraph 11 of the suspension order dated 15 October, 2019 gives reasons for taking immediate action for suspension of the License and is reproduced below:-

> "11. In view of the above, having carefully perused the Show Cause Notice and Order No. 41/2019-20 dated 16.09.2019 (passed by the Pr. Commissioner of Customs (General), NCH, Mumbai-I) forwarded by the Deputy Commissioner of Customs, Customs Broker Section, Office of the Principal Commissioner of Customs (General), Customs Broker Section, New Customs House, Ballard Estate, Mumbai-I, I the undersigned is of a considered view that the contravention committed by the said customs broker are grave and serious and therefore, immediate action is called for under Regulation

> 16 of CBLR, 2018. In view of the aforesaid, I, Neerav Kumar Mallick, Commissioner of Customs, Indore hereby suspend the License of M/s. Rishad Shipping & Clearing Agency Pvt. Ltd. with immediate effect under the provisions of Regulation 16 (1) of CBLR, 2018."

14. It would be seen from the aforesaid paragraph of the order dated 15 October, 2019 that immediate action was considered necessary, but the order does not mention that an inquiry against the Customs Broker was pending or contemplated.

15. Regulation 16 (2) provides that where a license 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 license has been suspended and may pass such order as he deems fit either revoking the suspension or continuing the suspension within fifteen days from the date of hearing granted to the Customs Broker. Personal hearing was provided to the appellant whereafter the suspension of the Brokers Licence of the appellant was continued by order dated 5 November, 2019.

16. The proviso to regulation 16(2) provides that in case the Commissioner of Customs passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.

17. Regulation 17 (1) provides that 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 license or impose penalty requiring the said Customs Broker to submit within thirty days a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person.

18. It is non compliance of this provision contained in regulation 17 (1) that is the bone of contention between the parties. According to learned Counsel for the appellant non-compliance of this provision would result in revival of the license. In this connection, it has been pointed out that though the period of 90 days should be counted from 07 February, 2019, but even if the date of receipt of order passed by the Commissioner of Customs at Mumbai by the Commissioner of Customs at Indore on 27 September, 2019 is taken on the date of receipt of the offence report, then too the period of 90 days expired on 25 December, 2019. According to the learned Authorized Representative of the Department the period of 90 days for issuance of the notice under regulation 17(1) is merely directory and so the licence issued to the appellant would not revive even if the notice is not issued within 90 days from the date of receipt of the offence report.

19. To verify whether the notice contemplated under regulation 17(1) was issued by the Commissioner of Customs at Indore, the learned Authorized Representative of the Department

was required to seek instructions by an order dated 29 January, 2020 passed by the Tribunal.

20. On 31 January, 2020, learned Authorized Representative of the Department placed before the Bench the communication dated 30 January, 2020 sent by the Joint Commissioner of Customs at Indore. It is stated therein that the notice under regulation 17(1) was not issued. The matter was heard at length on 31 January, 2020 and was adjourned to 04 February, 2020. Today, learned Authorized Representative of the Department has placed a communication dated 03 February, 2020 sent by the Joint Commissioner at Indore pointing out that the notice under regulation 17(1) has been issued to the appellant on 03 February, 2020.

21. The issue that arises for consideration is whether the requirement of issuance of the notice within 90 days from the date of receipt of offence report as contemplated under regulation 17(1) is mandatory or merely directory.

22. As noted above, regulation 14 deals with revocation of license or imposition of penalty. It provides that the Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds :-

"(a) failure to comply with any of the conditions of the bond executed by him under regulation 8;

(b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

(c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;

(d) adjudicated as an insolvent;

(e) of unsound mind; and

(f) convicted by a competent court for an offence involving moral turpitude or otherwise."

23. Regulation 16 deals with suspension of license. It provides that notwithstanding anything contained in regulation 14, the 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. Thus, regulation 16(1) confers power on the Commissioner of Customs to suspend the license if immediate action is necessary, but this action can be taken either when an enquiry against the Customs Broker is pending or is contemplated.

24. The suspension order dated 15 October, 2019 passed by the Commissioner of Customs does not mention that an enquiry against the Customs Broker is pending or is contemplated. To provide a safeguard to a license holder whose license has been

suspended on account of necessity of immediate action, sub-regulation (2) of regulation 16 provides that the Commissioner of Customs shall within 15 days from the date of suspension of license under sub-regulation (1) give an opportunity of hearing to the Customs Broker and may pass such order as he deems fit either revoking the suspension or continuing the suspension. In the present case, after providing opportunity of hearing to the appellant, the Commissioner of Customs considered it appropriate to continue the suspension. The proviso to sub-regulation (2) of regulation 16 provides that the Commissioner of Customs shall thereafter follow the procedure as contemplated in regulation 17.

25. Regulation 17 provides for time limit at various stages. Under sub-regulation (1), a time limit of 90 days from the date of receipt of an offence report has been set out for issuance of a notice proposing to revoke the license or impose a penalty. The Customs Broker is required to submit his reply to the show cause notice within 30 days. Under sub-regulation (5), the report has to be submitted by the concerned officer within a period of 90 days from the date of issue of the notice under sub-regulation (1). Sub-regulation (6) further provides that the officer concerned shall require the Customs Broker to submit within a period of not less than 30 days, a representation against the said report. Sub-regulation (7) provides that the Commissioner of Customs, after considering the report of the inquiry and the

representation thereon made by the Customs Broker, pass such orders as he deems fit, either revoking the suspension of the license or revoking the license of the Customs Broker within 90 days of the date of submission of the report.

26. Learned Counsel for the appellant has submitted that time limits have been provided in regulation 17 for a specific purpose because a license of a Customs Broker should not be suspended indefinitely as suspension of the licence deprives the licencee from carrying on business as a Customs Broker. The submission is that in order to achieve this purpose, regulation 17(1) provides for issue of a notice within 90 days from the date of receipt of the offence report In the present case, it is not disputed by the Revenue that the offence report was received by the Commissioner of Customs at Indore on 27 September, 2019.

27. It is in the light of the aforesaid discussion that the decisions relied upon by learned Counsel for the Appellant and the learned Authorized Representative of the Department need to be examined.

28. The issue as to whether issuance of a notice within the stipulated period was mandatory or directory was examined by the Delhi High Court in **Indair Carrier Pvt. Ltd. vs. Commissioner of Customs (General) and Ors**.[5] The provisions of the Customs House Agents Licensing Regulations,

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5 2016 (337) ELT 41(Del)

2004[6] had come up for interpretation. Regulation 22(1) is reproduced below:-

> "**22. Procedure for suspending or revoking licence under Regulation 20. -** (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs :
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> Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20."

29. The preliminary report concerning the offence was received on 16 August, 2013. The license issued to the appellant was suspended on 06 September, 2013. Under regulation 22(1) of the 2004 Regulations, the show cause notice is required to be issued within 90 days of the offence report and under regulation 22(5), the report is required to be submitted within 90 days of the issue of notice. Though a show cause notice under regulation 22(1) was not issued to the appellant within the stipulated period, but the Tribunal had directed the respondent to complete the proceedings under regulation 22 within 60 days from the date of receipt of order of the Tribunal, failing which the suspension order shall stand revoked. This order of the Tribunal was assailed before the Delhi High Court.

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6 2004 Regulations

30. The Delhi High Court emphasized upon the mandatory nature of regulation 22(1) of the 2004 Regulations and the relevant paragraphs are as follows:-

> **"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 :
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> > "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."
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> **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 (*M/s. 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.** Consequently, the Court is unable to sustain the directions issued by the **CESTAT in the impugned order dated 11th March, 2015, permitting the Respondents to proceed with and complete the inquiry within a further period of 60 days from the date of the impugned order of the CESTAT despite noting that the mandatory time-limits under the CHALR had not been adhered to**. The impugned order dated 11th March, 2015 of the CESTAT is accordingly set aside.
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> **9.** As a result, the SCN issued by the Respondents to the Petitioner pursuant to the order of the CESTAT on 17th March, 2015, the consequential inquiry report dated 16th April, 2015 and the order dated 7th May, 2015 passed by the Respondents revoking the Petitioner's licence are also held to be unsustainable in law and are hereby set aside.
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> **10. The CHA licence of the Petitioner/Appellant that stood revoked will stand revived forthwith.** In the event that the Petitioner's original CHA licence has expired in the meanwhile, its application for renewal will be processed by the Respondents without unnecessary delay. The appeal and the writ petition are allowed in the above terms with no order as to costs.
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> **(emphasis supplied)**

31. A perusal of the aforesaid judgment in Indair Carrier shows that the period of 90 days prescribed for issuance of a show cause notice under regulation 22(1), which provision is similar to the provisions of regulation 17(1) of the 2018 Regulations, was held to be mandatory in nature and, therefore, the directions issued by the Tribunal to complete the proceedings contemplated under regulation 22 within 60 days from the date of receipt of the order of the Tribunal was held not to be correct since the notice contemplated under article 17(1) had not been issued within a period of 90 days from the date of receipt of offence report.

32. This decision of the Delhi High Court in **Indair Carrier Pvt. Ltd.** was followed by the Delhi High Court in **Impexnet Logistic vs. Commissioner of Customs (General)**[7] and the observations are as follows:

> "**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."

33. In **Overseas Air Cargo Services vs. Commissioner of Custom (General), New Delhi**[8], the Delhi High Court again after placing reliance upon a number of judgments, observed that the provisions of regulation 22(1) of the 2004 Regulations are mandatory in nature and the relevant paragraphs are as follows:-

> "**13. This Court has in a series of judgments dealt with the question of mandatory nature of time limits set out in CHALR, 2004 and the corresponding provisions under the CBLR, 2013. This Court has in the following judgments reiterated the mandatory nature of the time limits set out in the CHALR, 2004 and corresponding provisions in the CBLR, 2013:**
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> (i) Order dated 29th April, 2016 in WP(C) 3071/2015 [*Mr. Sunil Dutt, through Proprietor* v. *Commissioner of Customs (General), New Customs House*] [2016 (337) E.L.T. 162 (Del.)];
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> (ii) Order dated 12th May, 2016 in CUSAA 25/2015 [*Indair Carrier Pvt. Ltd.* v. *Commissioner of Customs (General)*] [2016 (337) E.L.T. 41 (Del.)];
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> (iii) Order dated 24th May, 2016 in WP(C) No. 1734 of 2016 [*HLPL Global Logistics Pvt. Ltd.* v. *The*

7 2016 (338) ELT 347 (Del)
8 2016 (340) ELT 119 (Del)

Commissioner of Customs (General)] [2016 (338) E.L.T. 365 (Del.)];

(iv) Order dated 1st June, 2016 in WP(C) No. 5300 of 2016 [*Impexnet Logistic* v. *Commissioner of Customs (General)*] [2016 (338) E.L.T. 347 (Del.)].

15. The SCN dated 14th October, 2011 that was issued to the appellant is the same SCN that was issued to M/s. S.K. Logistics, M/s. Sunil Dutt and M/s. Entire Logistics Pvt. Ltd. **The offence report is the same for all the said noticees. It was received on 19th May, 2011. In terms of Regulation 22(1) of the CHALR, 2004 (which corresponds to Regulation 20(1) of the CBLR, 2013), the SCN had to be issued within ninety days from 19th May, 2011, i.e., on or before 18th August, 2011. Instead the SCN was issued on 14th October, 2011**. Secondly, in terms of Regulation 22(5) of the CHALR, 2004, the enquiry had to be completed and a report submitted within 90 days of the issuance of the SCN under Regulation 22(1). In the present case, it is not disputed that the inquiry report was submitted only on 16th January, 2015 more than three years after the SCN dated 14th October, 2011 was issued.

17. Consequently, following the above decisions, the Court holds that the impugned order dated 10th April, 2015 passed by the Commissioner of Customs (General), Delhi revoking the CHA license of the appellant to be unsustainable in law. The said order and the consequential order dated 16th September, 2015 of the CESTAT affirming it are hereby set aside."

(emphasis supplied)

34. The Madras High Court in **Saro International Freight System vs. Commissioner of Customs, Chennai VIII**[9] examined the provisions of regulation 20(1) of the Customs Brokers Licensing Regulations 2013[10]. The provisions of regulation 20(1) of the 2013 Regulations are similar to the provisions of regulation 22(1) of the 2004 Regulations and regulation 17(1) of the 2018 Regulations. Regulation 20(1) of the 2013 Regulations is reproduced below:-

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9 2016 (334) ELT 289 (Mad)
10 2013 Regulations

> **"Regulation 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 defence and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs."

35. After taking note of the earlier decision of the Madras High Court in **The Commissioner of Customs, Chennai vs. CESTAT and Others)**[11], the Madras High Court in **Saro International** held that the time limit prescribed under regulation 20(1) of the 2013 Regulations is mandatory. The observations of the High Court are as follows:-

> "**24.** The Customs Broker Licensing Regulations, 2013 were promulgated in exercise of powers conferred under sub-section (2) of Section 146 of the Customs Act, 1962. It is only under the regulations, the licence is granted and the regulations also contain various provisions to regulate the affairs of the customs broker including the revocation of the licence. The regulations contemplate action against the customs broker *de hors* the provisions under the Customs Act. Therefore, the regulations cannot be treated as subordinate legislation. Moreover, every implementing authority of any fiscal statute is only performing a public duty. **Therefore, it cannot be said that the provision is to be termed as 'directory' just because its adherence is in the nature of performance of a public duty. What is to be considered is the object of the enactment in prescribing a period for the performance of such public duty.**
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> **25.** The power to revoke the licence is granted under Regulation 18 and the conditions and the procedure are contemplated under Regulation 20. Before, deciding the

11 2014 (310) ELT 673

question as to whether the time limit prescribed is "directory" or "mandatory", it is relevant to quote the Regulation 20 of CBLR, 2013.

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27. The purpose, for which such time limit has been prescribed, is to curb the smuggling of goods and in the result to cancel the licences of the brokers if they are involved and to impose penalty. The interpretation of a statute must always be to give a logical meaning to the object of the legislation and the aim must be to implement the provisions rather than to defeat it. As laid down by the Apex Court in the judgments relied upon by the learned counsel for the petitioners, when a statute prescribes a thing to be done in a particular manner, it must be performed in such a manner. Also, the use of the language "shall" in the regulation cannot be termed as "directory" as one of the consequence of the action is the revocation of the licence and it would also pave way for inaction by the officials breeding corruption. The offences complained in the cases are breach of Regulation 11 ……

28. It is also to be noted that every act of breach by the Broker would entitle the authorities to initiate proceedings from the date of knowledge of the offence. It is only if the time limit is strictly followed, swift action can be initiated against the Customs Brokers and the authorities can also be made accountable. **The Regulations only contemplate initiation of proceeding by issuance of notice within 90 days. While, making out a *prima facie* case, the respondents ought to have, without any shadow of doubt, treated the word "shall" in Regulation 11 as "mandatory" and not "directory". Therefore, when a time limit is prescribed in regulations, which empowers action in Regulation 18 and procedure in Regulation 20(1), the use of the term "shall" cannot be termed as "directory". It is** pertinent to mention here that the CBLR, 2013 have replaced the CHA Regulations. The CHA Regulations did not have any time limit to complete the proceedings. Therefore, by a Circular 9/2010, dated 8-4-2010, the necessity to include a time limit for initiating action was addressed by the Board after field inspection and by a notification dated 8-4-2010, amendments prescribing time period for initiating action and completing proceedings was made. The same was given effect by notification dated 20-1-2014. Whereas, under the CBLR, 2013 having found the necessity to prescribe a period, the Central Board, the statutory authority had included the same in the Regulations itself, when they were brought into force. **Therefore, when a time limit is prescribed in Regulations, which empowers action under Regulation 18 by following the procedure in Regulation 20(1), the use of the term "shall" cannot be termed as**

> **"directory". Under such circumstances, the rule can only be termed as "mandatory".**
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> **31.** Therefore, this Court is of the view that the impugned show cause notice issued by the respondent is without jurisdiction, as it has been issued beyond the period prescribed in the regulations, which have statutory force and hence, not sustainable."
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> **(emphasis supplied)**

36. Thus, the Delhi High Court and the Madras High Court, while dealing with the provisions of regulation 22(1) of the 2004 Regulations and regulation 20(1) of the 2013 Regulations, which are similar to regulation 17(1) of the 2018 Regulations, have held that time limit prescribed for issuance of a notice within 90 days from the date of receipt of the offence report is mandatory in nature and non-compliance of the notice would result in revival of the license.

37. Learned Authorized Representative of the Department has however, placed reliance upon a judgment of the Bombay High Court in **The Principal Commissioner of Customs (General) Mumbai vs. Unison Clearing Pvt. Ltd.**[12] to contend that the time limit prescribed under regulation 17(1) of the 2018 Regulations is not mandatory in nature and is only a directory. The issue that arose before the Bombay High Court was whether the time period prescribed for issuance of the notice contemplated under regulation 20(1) of the 2013 Regulations within 90 days from the receipt of the offence report

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12 2018 (361) ELT 321(Bom)

and whether the time period prescribed for submission of the inquiry report under regulation 20(5) of the 2013 Regulations within 90 days from the date of issue of the notice under regulation 20(1) were mandatory.

38. After considering the judgements of the Delhi High Court and the Madras High Court, referred to above, the Bombay High Court expressed its inability to hold that time limit prescribed under the aforesaid regulations of the 2013 Regulations were mandatory in nature. The observations of Bombay High Court are as follows:-

> **"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.** As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the timelimit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. **One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule.** These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

(emphasis supplied)

39. This decision of the Bombay High Court was subsequently followed by the Bombay High Court in **Commissioner of Customs (General) vs. Razvi Shipping Agency**[13] **.**

40. The Calcutta High Court in **OTA Fallons Forwarders Pvt Ltd. vs. Union of India**[14]**,** after referring to the aforesaid judgments of the Delhi High Court, the Madras High Court and the Bombay High Court followed the view expressed by the Bombay High Court and held that the time limit prescribed in regulation 22(1) of the 2004 Regulations or regulation 20(1) of the 2013 Regulations is not mandatory in nature. Paragraph 16 of the judgment is reproduced below:-

> "16. Regulations of 2004 as well as the Regulations of 2013 are products of exercise of powers under Section 146 of the Customs Act, 1962. Both the Regulations regulate the affairs of a Customs House Agent, subsequently known as the Customs Agent in the Regulations of 2013. Regulation 22 of the Regulations of 2004 and Regulation 20 of the Regulation 2013 deal with the power to revoke a licence granted. Both the Regulations stipulate time limits. None of the Regulations, however, provide for the consequence of not adhering to the time limit prescribed. **The consequence of non-adherence to the time limit being not provided for in either of the two Regulations, it is open to an interpretation that, the time limits prescribed are not mandatory.** While interpreting a statute when it provides for a time limit for doing a certain act, then, the entire statute is required to be considered, in the context of the object that the statute seeks to achieve. **A statutory provision prescribing a time limit without providing for the consequence of non-adherence can be interpreted to mean that, the time limit provided is directory and not mandatory.** Regulation 22 of the Regulations of 2004 and Regulation 20 of the Regulations of 2013 are provisions for the purpose of checking unwholesome practices at the instance of a Customs House Agent or a Customs Agent as the case may be. These are provisions which empower the authority to revoke the licence granted as a measure of punishment for a wrongdoing of the licensed person. Any licence granted unless coupled with a grant or interest, is revocable. These provisions provide for the procedure for the

13 2019 (368) ELT 850 (Bom)
14 2018 (362) ELT 947 (Cal)

> revocation of the licence granted. These provisions seek to regulate the affairs of the licensed persons, so that, such licensed persons obeys the grant of licence in true spirit, on the pain of cancellation of the licence upon being found to have transgressed its parameters. The licence granted under the Regulations of 2004 or 2013 cannot be said to be coupled with any grant or interest making it irrevocable. Such is not the contentions of the petitioner."
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> **(emphasis supplied)**

41. Thus, there are two sets of decisions. The Delhi High Court and the Madras High Court have held that time limit prescribed for issuance of the notice within 90 days from the date of receipt of the offence report is mandatory in nature, whereas the Bombay High Court and the Calcutta High Court have held that the requirement of issuance of the notice within the stipulated period is not mandatory in nature.

42. The issue, therefore, is which set of decisions should be followed. Fortunately, this issue has been examined by a Larger Bench (Five Member Bench) of the Tribunal in **Collector of Central Excise, Chandigarh vs. Kashmir Conductors**[15]. One issue that was addressed by the Larger Bench was what should be done when the Tribunal is faced with conflicting decisions of High Courts. The five member Larger Bench of the Tribunal held that if the jurisdictional High Court has taken a particular view on an interpretation or proposition of law, that view has to be followed, but if the jurisdictional High Court has not expressed any view in regard to the subject matter and there are conflicting

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15 1997 (96) ELT 257 (Tri)

views of other High Courts, then the Tribunal will be free to formulate its own view. The relevant paragraphs of the decision of the Larger Bench are reproduced below:-

> "**10.** The question as to how the Tribunal should proceed in the face of conflicting decisions of High Courts has been considered in *M/s. Atma Steels P. Ltd. and others* v. *Collector of Central Excise, Chandigarh* reported in l984 (17) E.L.T. 331 wherein the Larger Bench consisting of five Members held that, in view of its All India jurisdiction and peculiar features, the Tribunal cannot be held bound to the view of any one of the High Courts, but has the judicial freedom, to consider the conflicting views, reflected by different High Courts, and adopt the one considered more appropriate to the facts of a given case before the Tribunal. The Tribunal also indicated that this should be so, irrespective of the fact whether one particular assessee was within the jurisdiction of a specified High Court or the original adjudicating authority was located there. The judgment of the Apex Court in the case of *M/s. East India Commercial Co. Ltd.* v. *Collector of Customs, Calcutta* reported in 1983 (13) E.L.T. 1342 (S.C.) was brought to the notice of the Larger Bench, but, was not adverted to sufficiently in the course of discussion. In the *East India Commercial Co.* case, one of the questions for consideration was whether the interpretation given by the Calcutta High Court to Section 167 of the Sea Customs Act, 1878 would be binding on authorities functioning within the jurisdiction of the High Court and the Supreme Court held that "it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. ....We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence.........". This decision has been followed by the Bombay High Court in *CIT* v. *Godavaridevi Saraf* reported in 1978 (2) E.L.T. (J 624).
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> **10.1** In the case of U.P. Laminations v. Collector of Central Excise, Kanpur reported in 1988 (35) E.L.T. 398 (T), the Tribunal has followed the Supreme Court judgment in the case of East India Commercial Co. case and set aside the show cause notice issued against the appellants therein as it was in direct violation of the law laid down by the Allahabad High Court within whose jurisdiction both the manufacturer and the Collector of Central Excise were situated.
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> **10.2** In a recent decision of the Tribunal in the case of Madura Coats v. CCE, Bangalore reported in 1996 (82) E.L.T. 512, it has been held that the decision of a particular High Court should certainly be followed by all authorities within the territorial

> jurisdiction of that High Court and that the authorities in another State are not bound to follow the views taken by a particular High Court in the absence of a decision by the jurisdictional High Court with regard to constitutionality of a provisions. The Tribunal has held that since the adjudication of vires of a provision of a statute or Notification is outside the jurisdiction of the Tribunal and the jurisdictional High Court i.e., the High Court having jurisdiction over the authority and the assessee, has not struck down the provision or Notification as *ultra vires*, the Tribunal has to follow the same and the assessee is entitled to take the stand that he is entitled to the benefit of the particular provision or Notification since the jurisdictional High Court has not struck it down, even though some other High Court may have done so. In case the conflict of decisions among High Courts does not relate to vires of any provision or Notification, it has been held that the Tribunal has to proceed in accordance with the decision in *Atma Steels P. Ltd.* in the light of the decision of Supreme Court in the *East India Commercial Company* case i.e. where the jurisdictional High Court has taken a particular view on interpretation or proposition of law, that view has to be followed in cases within such jurisdiction. If the jurisdictional High Court has not expressed any view in regard to the subject matter and there is conflict of views among other High Courts, then the Tribunal will be free to formulate its own view in the light of *Atma Steels P. Ltd.* case; however, there is a decision of only one High Court in regard to disputed interpretation or proposition of law, the Tribunal is bound to follow that order since it is not at liberty to disregard the solitary High Court decision."

43. In view of the aforesaid decision of the Larger Bench of the Tribunal, the judgements rendered by the Delhi High Court would have to be followed. The Delhi High Court has, in very clear terms, held that the time limit prescribed under the Regulations for issuance of the notice within 90 days from the date of receipt of the offence report is mandatory in nature. Such being the position of law, the Brokers Licence would automatically stand revived if a notice contemplated under regulation 17(1) of the 2018 Regulations is not issued within 90 days from the date of receipt of the offence report.

44. In the present case, the notice contemplated under regulation 17(1) was not issued within 90 days from 27 September, 2019. The suspension order dated 15 October, 2019, as continued subsequently by order dated 5 November, 2019, cannot survive. The Brokers Licence of the Appellant shall, therefore, stand revived.

45. Faced with this difficulty, learned Authorized Representative of the Department made an attempt to submit that since the present appeal has been filed to assail the order dated 05 November, 2019, only the merits of the said order would have to be examined and the Tribunal should not examine whether the provisions of regulation 17(1) of the 2018 Regulations have been complied with or not.

46. This submission cannot be accepted. The revocation of license is provided under regulation 14. Suspension can be ordered in the circumstances mentioned in regulation 16. The proviso to regulation 16(2) provides that after an order for continuation of suspension is passed, the procedure set out in regulation 17(1) has to be followed. Thus, if the time limit under regulation 17(1) for issuance of the notice has not been adhered to, the order dated 05 November, 2019 for continuing the suspension of license cannot survive after a period of 90 days from the date of receipt of the offence report.

47. Thus, for all the reasons stated above, the suspension order dated 15 October, 2019, as continued by subsequent order dated 05 November, 2019, deserves to be set aside and is set aside. The Brokers Licence of the Appellant automatically stands revived. The appeal is, accordingly, allowed.

(Dictated and pronounced in the Court)

(Justice Dilip Gupta)
President

(C. L. Mahar)
Technical Member

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