

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.25116 and 25248 of 2015
MP.Nos.1, 1, 2 and 2 of 2015

M/s.Saro International Freight system
represented by its Managing Partner S.Sivaperumal
Chennai-1
Petitioner in both WPs

Vs

The Commissioner of Customs
Chennai VIII Commissionerate, Customs House
No.60, Rajaji Salai, Chennai-1
Respondent in both WPs

Prayer:- These Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the Order-in-Original No.39599/2015, dated 13.7.2015 and notice dated 13.7.2015 issued from file No.R634/CHA and to quash the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondent : Mr.V.Sundareswaran, SC

COMMON ORDER

In these Writ Petitions, the Petitioner has challenged the Order-in-Original No.39599/2015, dated 13.7.2015, ordering for continuation of suspension of the Customs Broker Licence of the Petitioner and the show cause notice dated 13.7.2015, issued under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 (hereinafter referred to as the Regulations).

2. The case of the Petitioner is that the Petitioner was granted a licence during 1999 to operate as a Customs House Agent. Based on intelligence that the Petitioner is under invoicing the imports and thus, is evading payment of customs duty, search operations were conducted by the Directorate of Revenue Intelligence, Chennai Zonal Unit. During the investigation, statements were recorded from the representatives of the importers as well as the Manager of the Petitioner. After completing investigation, the respondent issued a suspension order dated 27.3.2015, suspending the operation of the licence of the Petitioner with immediate effect, by invoking the provisions of Regulation 19(1) of the Regulations. The Petitioner submitted a detailed written submissions on 5.5.2015, denying the allegations. However, the respondent passed the impugned order dated 13.7.2015, ordering continuation of the suspension order in terms of Regulation 19(2) of the Regulations. Along with the said order, the Respondent also issued the impugned show cause notice dated 13.7.2015, calling upon the Petitioner to show cause as to why the license issued to the Petitioner should not be revoked and security deposited by them should not be forfeited or penalty should not be imposed under Regulation 18, for their failure to comply with the Provisions of the Regulations. The Petitioner challenged the suspension order as well as the notice in a single Writ Petition in WP.No.22784/2015, which was dismissed as withdrawn, with a liberty to file separate writ petitions. Hence, these Writ Petitions have been filed.

3. Refuting the averments of the affidavits filed in support of the above Writ Petitions, a common counter affidavit has been filed by the

Respondent and the brief contents of the same are as follows:-

a. The Petitioner is a holder of Customs Broker Licence No.R-634/CHA. The Petitioner had acted as the Customs Broker for clearance of lights and light fixtures, imported by M/s.Spark Lites through Chennai Seaport. Based on specific intelligence that said importer had been importing the said goods in the name of M/s.Spark Lites and M/s.Suraj Impex, by misdeclaring the transaction value, thereby evading payment of customs duties, the DRI, Chennai Zonal Unit searched various places of the Petitioner on 5.1.2015 and several incriminating evidences and materials, containing details of parallel invoices, showing the actual transaction values were seized. During the investigation, statements from the employees of M/s.Spark Lites, Chennai and the Petitioner Firm, were recorded under Section 108 of the Customs Act. Investigation had revealed that Shri Rajesh Jain had declared only 1/4th to 1/5th of the actual value of the imported goods to Customs and thereby had cleared the said imported goods without payment of appropriate customs duty. Shri Rajesh Jain so far paid Rs.2 crores towards differential duty liability.

b. The Petitioner appear to have been aware of the undervalued transactions in the name of M/s.Spark Lites and actively connived with Shri Rajesh Jain, in misdeclaring the value of the imported goods to customs by way of manipulating it, which resulted in huge evasion of customs duty, which would amount to contravening the provisions of the CBLR 2013. Hence, in exercise of powers conferred under the provisions of the Regulation 19(1) of CBLR, 2013, the license of the Petitioner was suspended by order dated 27.3.2015. After going through the case records, all the written submissions

and oral submissions made at the time of personal hearing, in exercise of powers conferred under the provisions of Regulation 19(2) of CBLR, 2013, by the order dated 13.7.2015, ordered for continuation of the suspension of the customs broker licence of the petitioner. For non compliance of the provisions of CBLR, 2013, the Customs Broker is liable to be punished by way of revocation of license. Hence, the impugned show cause notice dated 13.7.2015 has been issued for conducting enquiry proceedings under CBLR, 2013. The Petitioner cannot challenge the very same proceedings, when the same were already challenged in a Writ Petition, which was dismissed as withdrawn. In such facts, these Writ Petitions are liable to be dismissed.

4. The learned counsel for the Petitioner has contended that the impugned notice under Regulation 20 has been issued, beyond the statutory period of 90 days, which is mandatory in nature and hence, it is barred by limitation, inasmuch as the impugned notice dated 13.7.2015 was issued after 90 days from the date of the suspension order dated 27.3.2015 and the letter of the investigating agency dated 17.3.2015. The impugned order, ordering for continuation of suspensin of licence, is also not in confirmity with the provisions of Regulation 19(2) of CBLR, 2013 and barred by limitation, inasmuch the same was passed beyond 15 days from the date of hearing i.e. 11.06.2015. The learned counsel for the Petitioner further contended that Regulation 19(1) clearly stipulates that only in appropriate cases where immediate action is necessary, licence is to be suspended and that inasmuch as the Petitioner disputed the statements given by the importer, the same are required to be established through a proper enquiry and subjecting the importers and their

employees to cross examination, since the Petitioner was not aware of the alleged violations with regard to valuation indulged by them. When the genuineness of email exchanges, based on which the impugned order has been passed, has not been proved, the impugned order and the notice are not sustainable.

5. Per contra, the learned standing counsel for the Respondents, has contended that the Petitioner, being granted license to perform the duties of the Customs department, had misused the license. The report dated 17.3.2015 was received on 19.3.2015 and the show cause notice was issued on 13.7.2015 within 80 working days (excluding Saturdays, Sundays and National Holidays) and hence, there is no time delay as alleged by the Petitioner. The period of 90 days, prescribed in Regulation 20 is only directory and not mandatory and that from the various statements obtained during the enquiry, the commission of the offences alleged is established and if the Petitioner is permitted to operate, it would cause serious prejudice to the department. It is further contended by the learned standing counsel for the Respondent that the proper recourse for the petitioner would be to prefer an appeal if any order is passed against them and prayed for dismissal of these writ petitions.

6. This court heard the learned counsel on either side and considered their submissions carefully and perused the materials available on record.

7. It is the specific case of the Petitioner that the impugned show cause notice has been barred by law of limitation, as the time period prescribed in Regulation 20 (1) is mandatory and hence, the writ jurisdiction under Article

226 can be invoked. Per contra, on the side of the respondents, it is contended that the period prescribed is only directory and not mandatory and that when there is an alternative remedy available, the Writ Petitions are not maintainable.

8. In **1975 1 SCC 559 (Ramchandra Keshav Adke (dead) by Lrs and others Vs. Govind Joti chavare and others)**, it has been held as under:-

"14. Thus, the first point to be considered is, whether the requirements, of these provisions are mandatory or directory. No universal rule, said Lord Campell, can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope. Such intention of the legislature is therefore to be ascertained upon a review of the language, subject matter and importance of the provision in relation to the general object intended to be secured, the mischief, if any, to be prevented and the remedy to be promoted by the Act".

9. In **AIR 1999 SC 1281 (Babu Verghese and others Vs. Bar Council of Kerala)**, it has been held as under:-

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor (1875) 1 Ch.D 426 which was followed by Lord Roche in Nazir Ahmad vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

10. In **2014 310 ELT 673 ((The Commissioner of customs, Chennai Vs. CESTAT and others)**, it has been held as under:-

"25. As per the notification and instruction dated 20.01.2014, time limit has been prescribed in respect of the procedure contemplated under Regulation 22 and as per sub-regulation (1) of Regulation 22, the Commissioner of Customs shall issue a notice in writing to CHA within 90 days from the date of receipt of offence report, stating the grounds on which it is

proposed to suspend or revoke the licence and require the said CHA to submit within 30 days... In C.M.A.No.1422 of 2014, the enquiry report is dated 24.05.2011 and in respect of the respondents in C.M.A.Nos.1423 to 1426/2014, the enquiry/offence report is dated 20.03.2012 and earlier to the said notification, time limit was prescribed to CHAs to submit their response within 45 days to the notice issued under Regulation 22(1), but as per the above said notification, time limit has also been prescribed for the issuance of such notice also. The Tribunal has noted the fact that though the order of suspension came to be passed on 23.06.2011 in C.M.A.Nos.1422/2014 in respect of M/s.Manjunatha Shipping Services Limited, which was ordered to continue, vide order dated 02.09.2011 and in respect of C.M.A.Nos.1423 to 1426/2014, the original orders of suspension came to be passed on 25.04.2012, which was ordered to continue, vide order dated 23.05.2012, the appellant did not take any steps to issue notice under Regulation 22(1). In terms of the notification dated 20.01.2004 prescribing time limit to Regulations 20 and 22 of CHALR 2004, it is not open to the first respondent to issue notice under Regulation 22(1) as the time limit of 90 days from the date of offence report/enquiry report has expired long back.”

11. The following judgments have been relied on by the

Respondents to contend that the period prescribed is only directory and not mandatory.

12. In **Dattatraya Moreshwar Vs. The State of Bombay and others (AIR-1952-SC-181)**, it has been observed that law which creates public duties is directory, but if it confers private rights, it is mandatory. Relevant passage is quoted below:-

“It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done.

13. In **AIR-1965-SC-895 (Raza Buland Sugar Co. Ltd Vs. Municipal Board, Rampur)** and **AIR-1975-SC-2190 (State of Mysore Vs. V.K.Kangan)**, the Honourable Supreme Court held as under:-

“as to whether a provision is mandatory or directory, would, in the ultimate analysis, depend upon the intent of the law maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.”

14. In **2003-8-SCC-498 (P.T.Rajan Vs. TPM Sahir)**, it has been held that test of mandatory or directory, context, purport and object of the statute are to be ascertained. Procedural provision even if uses “shall” may be construed as directory if no prejudice is caused. Provisions requiring statutory functionary to perform a statutory function within the prescribed time to be considered as directory.

15. In **2013 (290) ELT 3 (PML Industries Limited Vs. Commissioner of Central Excise)**, the High Court of Punjab and Haryana at Chandigarh, has observed as under:-

“The provisions of the statute and circular are required to be examined, as to when a provision of a statute is to be treated as mandatory or directory. It is well settled that the use of expression “shall” or “may” is not determinative of the fact whether the provision is directory or mandatory. There is no general rule in respect of as to when a provision is to be treated as directory or mandatory, but in every case the object of statute must be looked.

16. In **AIR-1957-SC-912 (State of UP Vs. Manbodhan Lal Srivastava)**, it has been held as under:-

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern and these are to be ascertained, not only from the phraseology of the provision”

but also by considering its nature, and the consequences which would follow from construing it the one way or the other...

In *Banwarilal Agarwalla Vs. State of Bihar* (AIR-1961-SC-849), a Constitution Bench of the Supreme Court held that no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non observance thereof involves the consequence of invalidity or only directory, i.e. a direction the non observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But, in each case, the court has to decide the legislative intent. The courts have to consider not only the actual words used, but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same.

17. In **W.P No.11683 of 2014**, batch etc. this Court by order dated

25.8.2014, has held as under:-

“56. Generally, time limits prescribed, especially in subordinate legislation, can be taken only to be directory and not mandatory. Otherwise, a subordinate legislation may even destroy the Parent legislation, by default.

57. In *Raza Buland Sugar Co. Ltd v. The Municipal Board* [AIR 1965 SC 895], a Constitution Bench of the Supreme Court held that the question whether a particular provision is mandatory or directory, cannot be resolved by laying down any general rule and that it would depend upon the facts of each case. The Court has to consider the purpose for which the provision had been made, its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting therefrom when the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject as well as other considerations which may arise on the facts of a particular case, including the language of the provision. The said decision of the Constitution Bench was followed in *Salem Advocate Bar vs. Union of India* [2005 (6) SCC 344]. While doing so, the Supreme Court pointed out therein that our laws on procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their back, that proceedings that affect their lives and properties should not continue in their absence and that they should not be precluded from participating in them.

58. In *Sharif-Ud-Din vs. Abdul Gani Lone* [AIR 1980 SC 303], the Supreme Court indicated that the question whether a provision of law is mandatory or not depends upon its language, the context in which it is enacted and its object. The Court made an important observation, which will resolve the problem for us and hence it is extracted as follows:-

"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. "

63. Another simple test to determine whether a time limit stipulated in a rule is directory or mandatory, is to see whether there is any indication in the Rule itself about the consequences of non compliance with the same. If a statutory provision contains a prescription and also stipulates the consequences of non compliance with the condition, it would normally be taken to be mandatory. If the consequences of non compliance are not indicated, then, the provision has to be seen only as directory. "

18. In **1997 9 SAC 132 (Mohan Singh Vs. IAAI)** , the Apex Court

has held thus:-

"If the object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of the enactment, the same should be considered as directory

as to whether a provision is mandatory, would in the ultimate analysis depend upon the intent of the law maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.

The Honourable Supreme Court in the case of P.T.Rajan Vs. TPM Sahir and others (2003-8-SCC-498) categorically held that test of mandatory or Directory. Context, purport and object of the statute to be ascertained. Procedural provision even if uses "shall" may be construed as directory if no prejudice is caused. Provision requiring statutory functioning to perform a statutory function within the prescribed time to be considered as directory".

19. In **RC.No.4 of 1997 (order dated 12.10.2000) (Sri Kamatchi**

Agencies Vs. Commissioner of Customs, Chennai), this Court has elaborately discussed the role of CHA/Customs Broker in the clearance of goods for import/export, which reads as under:-

"The very purpose of granting a licence to a person to act as Custom House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods at any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments etc. Therefore the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as Custom House Agent, it is seen that while Custom House Agent should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of his access to the Department. The grant of licence to a person to act as Custom House Agent is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or

export of the goods. In such circumstances, great confidence is reposed in a Custom House Agent...”

20. In **2015 (318) ELT 116 (Mad) (Float Glass Centre Vs. Union of**

India), this court has held as follows:-

““56. Generally, time limits prescribed, especially in subordinate legislation, can be taken only to be directory and not mandatory. Otherwise, a subordinate legislation may even destroy the Parent legislation, by default.

57. In *Raza Buland Sugar Co. Ltd v. The Municipal Board* [AIR 1965 SC 895], a Constitution Bench of the Supreme Court held that the question whether a particular provision is mandatory or directory, cannot be resolved by laying down any general rule and that it would depend upon the facts of each case. The Court has to consider the purpose for which the provision had been made, its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting therefrom when the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject as well as other considerations which may arise on the facts of a particular case, including the language of the provision. The said decision of the Constitution Bench was followed in *Salem Advocate Bar vs. Union of India* [2005 (6) SCC 344]. While doing so, the Supreme Court pointed out therein that our laws on procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their back, that proceedings that affect their lives and properties should not continue in their absence and that they should not be precluded from participating in them.

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"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public

duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. "

21. In **1980-1-SCC-403 (Sharif Ud Din Vs. Abdul Gani Lone)**, the

Honourable Supreme Court, has held thus:-

"The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

22. In **1998-7-SCC-123 (N.Balakrishnan Vs. M.Krishnamurthy)**, it

has been held as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

23. Upon consideration of the above judgments, the ratio that emerges are that (i) any time limits prescribed in a sub-ordinate legislation can only be termed as directory, (ii) a provision as to whether it is ‘mandatory’ or ‘directory’ would depend upon the object of the enactment and (iii) the consequences of violating the provision must not affect the interest of the other party and would defeat the purpose of the enactment.

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 dehors the provisions under the Customs Act. Therefore, the regulations cannot be treated

as sub-ordinate 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.

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

"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."

26. Upon perusal of the above regulation, it can be seen that an independent right is issued to the Commissioner to initiate action dehors the enquiry under other Regulations and the Customs Act. The regulations does not only contemplate action against the erring Brokers, but also contemplates timely action. No doubt that action is to be initiated against the erring brokers as laid down by this Court in the case of Kamatchi Agencies cited supra, but the same has to be in strict compliance with the provisions. The law of limitation is common to both the parties. The provision not only enables the respondent to

levy penalty, but also empowers the respondent to revoke the license, which is an extreme step curtailing the right to carry on any trade or profession as guaranteed by the Constitution of India. The object behind such a provision can only imply the following: (a) the truth must be culled out at the earliest point in the interest of not only the Customs Broker or for that matter of the department also (b) that such unlawful activities must be curbed at the earliest point by revoking the licence, (c) unless a time limit is prescribed, action would not be initiated.

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, which reads as under:-

11. Obligations of Customs Broker:- A Customs Broker shall-

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(b) transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(c) not represent a client in any matter to which the Customs Broker, as a former employee of the Central Board of Excise and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;

(g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;

(h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his

transactions as a Customs Broker which is sought or may be sought by the Commissioner of Customs;

(k) maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current;

(l) immediately report the loss of licence granted to him to the Commissioner of Customs;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; and

(o) inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be within one month of such change.

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 09/2010 dated 08.04.2010, the necessity to include a time limit for initiating action was addressed by the Board after field inspection and by a notification dated 08.04.2010, amendments prescribing time period for initiating action and completing proceedings was made. The same was given effect by notification dated 20.01.2014. 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”.

29. In the case on hand, the impugned show cause notice dated 13.7.2015 has been issued after 90 days from the date of the suspension order dated 27.3.2015 and the report of the investigating agency dated 17.3.2015 or in other words, from the date of knowledge of the offence. In this regard, the learned counsel for the respondents have raised the following objections, viz.

(a) the Saturdays, Sundays and national holidays have to be excluded,

(b) the period would start to run only from the date of receipt of offence report and hence, the impugned show cause notice is within 90 days.

30. This court is of the considered view that the above objections of the Respondents are unsustainable for the following reasons:-

(i) the statute does not prescribe that the period to be reckoned are only the working days.

(ii) such an interpretation is applicable only in cases where the last date falls on a holiday and the time can be extended till the next working day and not otherwise.

(iii) the regulations do not define the word "offence report" and in the absence of any such definition, it can only be from the date of knowledge of the offence as held by this court in 2014 309 ELT 433 in para 17.

(iv) That the power under Regulation 18 and 20 dehors the power under Regulation 19 and the provisions of the Customs Act as evident from the reading of the Regulation 18 and 19 .

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.

32. In the result, as already discussed above, since the impugned show cause notice itself is barred by limitation, the same is set aside. Since the show cause notice is quashed, the the impugned order dated 13.7.2015 does not survive and the same is quashed. Accordingly, these Writ Petitions are allowed. No costs. Consequently, the connected MPs are closed.

08.12.2015

Index:Yes/No
Web:Yes/No
Srcm

To:

The Commissioner of Customs, Chennai VIII Commissionerate, Customs House, No.60, Rajaji Salai, Chennai-1

R.MAHADEVAN, J.

Srcm

WP.Nos.25116 and
25248 of 2015

08.12.2015