

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.3374, 3375, 8946, 12401, 15849,
16283 and 17059 of 2015
MP.Nos.1 to 1 and 2 to 2 of 2015

WP.No.3374 of 2015:-

M/s.Masterstroke Freight Forwarders Pvt Limited
represented by its Managing Director D.Sukumaran
Chennai-1

Petitioner

Vs

1. The Commissioner of Customs (Imports)
Customs House, No.60, Rajaji Salai, Chennai-1
2. The Inquiry Officer/Assistant Commissioner of Customs
Customs House, No.60, Rajaji Salai, Chennai-1

Respondents

Prayer:- WP.No.3374 of 2015 is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the show cause notice dated 25.06.2014 issued in F.No.R-506/CHA by the 1st Respondent and to quash the same.

The other Writ Petitions are filed under Article 226 of the Constitution of India for the reliefs as stated therein.

For Petitioners : Mr.Hari Radhakrishnan
(WP.3374, 3375, 15849 of 2015)

Mr.A.K.Jayaraj
(WP.12401, 16283 of 2015)

Mr.Sathish Sundar
(WP.8946 and 17059 of 2015)

For Respondents : Ms.Mallika Srinivasan, SC-R2-WP.3374/15

Mr.Rajnishpathiyil, SC-WP.3375/15

Mr.G.Rajagopalan, ASG assisted by
Mr.M.Devandran, SGSC-WP.8946 & 17059/15

Mr.V.Sundareswaran, SC-WP.12401/15

Mr.K.Mohanamurali, SC-R1-WP.15849/15

Mr.K.Monahamurali, SC-WP.16283/15

ORDER

In all the above Writ Petitions, except WP.No.8946 of 2015, the Petitioners therein have challenged the show cause notice issued under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 (hereinafter referred as CBLR 2013 or Regulations). In WP.No.8946 of 2015, the Petitioner therein challenged the order of suspension of the licence to operate as a customs broker.

2. The brief facts of the respective cases are as follows:

a. WP.No.15849/2015:- The Petitioner was granted a licence to operate as a customs broker after satisfying all the norms. Whiles, action has been initiated by the Mumbai Commissionerate, against the petitioner with regard to 10 Bills of Entry, through which undeclared goods were imported and prohibitory orders were issued on 02.02.2015. Aggrieved against the order, an appeal has been preferred before the Customs, Central Excise and Appellate Tribunal, Mumbai. Subsequently, the respondent has passed an order on 06.05.2015, under Regulation 19 (1) of the CBLR, 2013 and the suspension order has been ordered to be continued, vide proceedings, dated 25.05.2015 and also issued the impugned show cause notice dated 25.05.2015 under Regulation 20, proposing to conduct an enquiry for revocation of license and

imposition of penalty under Regulation 18 of the said Regulations. Aggrieved and contenting that the notice has been issued beyond the stipulated time of 90 days as prescribed in Regulation 20 (1) of CBLR, 2013, the Petitioner has approached this Court.

b. WP.No.3374/2015:- The petitioner was granted a licence to operate as a customs broker after satisfying all the norms. Whiles, during the course of their business activities, the Petitioner acted as a customs broker of one M/s.Kalp Impex, Surat. Alleging that the Advance Authorization Scheme was misused, an investigation was conducted by the Directorate of Revenue Intelligence. The allegation was that instead of obtaining the authorisation from the importer, the authorisation was obtained from the high sea sellers. Subsequently, a show cause notice was issued on 16.07.2012 as to why penalty should not be imposed and after enquiry, vide order in Original No.24505/2014 dated 28.03.2014, a penalty of 4,00,000/- was imposed. As against the order, an appeal has been preferred before the Tribunal. In the meanwhile, the first respondent has passed the order in original dated 05.06.2014, suspending the license of the petitioner and the same was revoked vide Order in Original No.26931/14, dated 24.06.2014. However, the present impugned notice dated 25.06.2014 has been issued under the Regulation 20 r/w Regulation 18 of CBLR 2013. Aggrieved and contending that the notice is beyond the stipulated period, the petitioner has approached this Court.

c. WP.No.3375/2015:- The petitioner was granted a licence to operate as a customs broker after satisfying all the norms. Whiles, action has been initiated by the Directorate of Revenue intelligence against the petitioner

with regard to certain Bills of Entry, through which undeclared goods like gold, R-22 gas, cigarette cartons were imported by the importers, viz. M/s.Supreme Trading, M/s.Happy Day Trading and M/s.Zone Impex. Subsequently, a show cause notice was issued on 02.07.2014 and the same are pending adjudication. In the meanwhile, the first respondent has passed the Order in Original dated 27.11.2014, suspending the license of the petitioner and the same was revoked vide Order in Original No.32751/14 dated 23.12.2014. However, the present impugned notice dated 23.12.2014 has been issued under the Regulation 20 r/w Regulation 18 of CBLR 2013. Aggrieved and contending that the notice is beyond the stipulated period, the petitioner has approached this Court.

d. WP.No.12401/2015:- The petitioner is a customs House Agent with a license granted under section 146 of the customs Act and is the holder of CHA Regular License. It was alleged that the petitioner filed Bill of Entry of mis-declared goods during the period April 2011 to September 2013, on behalf of their importers wherein the goods were allegedly undervalued. Further, it was alleged that the petitioner acted as customs broker without authorisation and without verification of the antecedents and credentials of the importers, filed the bill of entry and thereby violated the regulations of CBLR, 2013 and CHA Regular License Regulations. An order suspending the license was passed on 19.11.2014 under the regulation 19 of CBLR, 2013. Subsequently after verification, the suspension has been revoked. However, the present impugned notice dated 23.12.2014 has been issued. Aggrieved and contending that the notice is beyond the stipulated period, the petitioner has approached this Court.

e. WP.No.16283 /2015:- The petitioner is a customs House Agent

with a license granted under section 146 of the customs Act and is the holder of CHA Regular License. It was alleged that the petitioner filed Bill of Entry of mis-declared goods during the period April 2011 to September 2013, on behalf of their importers, wherein the goods were allegedly undervalued. Further, it was alleged that the petitioner acted as customs broker without authorisation and without verification of the antecedents and credentials of the importers, filed the bill of entry and thereby violated the regulations of CBLR, 2013 and CHA Regular License Regulations. An order suspending the license was passed on 19.11.2014 under the regulation 19 of CBLR, 2013. Subsequently after verification, the suspension has been revoked. However, the present impugned notice dated 08.01.2015 has been issued. Aggrieved and contending that the notice is beyond the stipulated period, the petitioner has approached this Court.

f. WP.Nos.8946/15 and 17059/15: - The petitioner is a partnership firm, which was granted a Customs House Agent license. The CBLR regulations have come into force in 2013 and the licence of the petitioner has been extended till 02.04.2014. During the course of business activities, the petitioner cleared the goods of the importers, M/s.K.S.Agency and M/s.K.H.Enterprises. One E.Jaikumar was authorised to clear the goods on behalf of the petitioner company. In September 2014, the Docks intelligent unit commenced investigations with respect to certain Bill of Entries of the importers which resulted in recovery of undeclared goods, viz. R-22 gas and Toilet requisites. Alleging that the said E.Jaikumar was not an employee of the petitioner and he has been authorised to verify the antecedents of the importers, the Order in Original dated 19.01.2015 came to be passed,

suspending the license of the petitioner under Regulation 19 (1) of the CBLR,2013. Subsequently after hearing the petitioner on the very same grounds, the impugned order dt 26.2.2015 in W.P.No.8946/15, confirming the order of suspension and the impugned notice dated 26.02.2015 in WP.No.17059/15, under Regulation 20 of CBLR,2013 have been issued. Aggrieved and contending that the order in original has been passed with a predetermined mind and the notice has been issued beyond the stipulated period, the petitioner has filed the above writ petitions.

3. Refuting the averments of the affidavit filed in support of the above Writ Petition, separate counter affidavits have been filed by the respondents in all the writ petitions and the brief contents of the same are as follows:

a. WP.No.15849/2015:- The order of the Mumbai customs commissionerate, dated 02.02.2015, prohibiting the petitioner from operating as a customs broker was received by the respondent on 09.02.2015 and in view of the undervaluation in the 10 Bills of Entry, the goods were seized on 10.12.2014. The IEC code does not belong to the importer and voluntary statements have been given by the importers and the owners of the code under Section 108 of the Customs Act, 1962 and the IEC holders were not aware of the import consignments and they were compensated monetarily and the petitioner did not physically verify the details. The voluntary statements of various persons have been extracted and relied upon to contend that there has been clear violation of the Regulations 11 and 18 of CBLR, 2013 by abetting and involving the transaction and therefore, the license was suspended under Regulation 19 (1) of CBLR, 2013 and the same was confirmed after enquiry on

25.05.2015. The notice would be in time if the Saturdays, Sundays and public holidays are excluded and the said time limit is only directory and not mandatory. The learned counsel for the petitioner requested the respondent not to take any action as the appeal before the CESTAT Mumbai is pending and it is only for that reason, no action was taken against the petitioner and being a Customs House Agent licensee, the petitioner has misused his position and defeated the very purpose for which the license was granted and therefore, the Writ Petition is liable to be dismissed.

b. WP.No.3374/2015:- The importer M/s.Kalp Impex, for whom the petitioner has acted as Customs Broker, has misused the Advance Authorisation Scheme and obtained Advance Authorisations/Licenses from DGFT, by giving false declaration, regarding factory premises, machinery to process the Mulberry Raw Silk Yarn and instead of importing the goods, the yarn was sold in high seas. The investigation against the said firm culminated in the issue of SCN No.DRI/SRU/INV-4/2010 dated 16.07.2012, demanding duty, penalty and proposing confiscation. Statement of R.Natarajan, Manager of the petitioner was obtained on 13.07.2010 and the statement of Kalpesh Bababbhai Patel, Proprietor of M/s.Kalp Impex was obtained on 30.05.2010 regarding the modus operandi of the transaction, which clearly spills the violations. Therefore, Show Cause Notice dated 16.07.2012 was issued by the DRI, Ahmedabad and the documents were received by their office on 21.03.2014. The Commissioner of Customs (Export), Chennai imposed a penalty of Rs 4,00,000/- on the petitioner vide Order in Original dated 28.03.2014. The petitioner has violated the mandatory norms in Regulations 11

and 18 of the CBLR. The time limit is only directory and not mandatory and more revenue loss would occur if they are permitted to operate and the writ petition is also liable to be dismissed as it is premature and the petitioner ought to be directed to participate in the enquiry.

c. WP.No.3375/2015:- The writ petition is premature, as it is only against a show cause notice. The petitioner in collusion with the importers have smuggled gold, imported cigarettes and R-22 Gas. Statements, by the DRI, Chennai were obtained from various persons involved in the transactions in 2014 and a show cause notice was also issued by DRI, Chennai on 2.07.2014. The respondent suspended the licence on 27.11.2014 and after hearing, the suspension was revoked on 23.12.2014 and thereafter, the present notice came to be issued. The petitioner has prima facie violated the Regulations of CBLR, 2013 and therefore, the action is necessary and with authority despite revocation of suspension. The offence report from the DRI was received by the respondent on 25.09.2014 and the notice has been issued on 23.12.2014 and hence, the same is within the time limit. In any case, the time limit prescribed is directory and not mandatory. Under the above circumstances, this Writ Petition is liable to be dismissed.

d. WP.No.16283/2015:- The petitioner, a Customs House Broker has misused the licence and aided the import of various types of edibles by their clients and importers, M/s.Shahi Foods, Chennai and M/s.High Regards International, Chennai by mis-declaration, description, value, Retail Sale Price and evaded duty during the period April 2011 to September 2013. The petitioner have permitted middlemen Mr.Ramadass and Mr.Thangaraj of

M/s.Seair Shipping Services to use the licence and clear the goods. The above acts are in clear violations of Regulations 11 and 18 of CBLR, 2013 and voluntary statements have been given by various persons involved in the transaction accepting the modus operandi. Further, the DRI has communicated about the alleged offences vide letter dated 23.10.2014 and the order of suspension was passed on 19.11.2014. Subsequently, after hearing , the order of suspension was revoked. However, it does not absolve the petitioner of the offence and therefore, the present notice has been issued. In view of the fact that the offence was brought to their knowledge only on 23.10.2014, the notice under Regulation 20 dated 8.01.2015 is well within time. The date of show cause notice, proposing to take action for the offense is irrelevant and only the date of receipt of offence report is relevant and the petitioner has violated the role entrusted to them as CHA and therefore, they cannot be permitted to misuse the licence and hence, this writ petition is liable to be dismissed.

e. WP.No.12401/2015:- The petitioner, a Customs House Broker has misused the licence and aided the import of various types of edibles by their clients and importers, M/s.Shahi Foods, Chennai and M/s.High Regards International, Chennai by mis-declaration, description, value, Retail Sale Price and evaded duty during the period April 2011 to September 2013. A show cause notice dated 03.03.2014 was issued under Sections 112 (a) and 114AA of the Customs Act,1962. The petitioner have permitted middlemen Ramadass and Thangaraj of M/s.Seair Shipping Services to use the licence and clear the goods. The above acts are in clear violations of Regulations 11 and 18 of CBLR, 2013 and voluntary statements have been given by various persons

involved in the transaction, accepting the modus operandi. Further, the DRI has communicated about the alleged offences vide letter dated 23.10.2014 and the order of suspension was passed on 19.11.2014. Subsequently after hearing, the order of suspension was revoked on 23.12.2014. However, it does not absolve the petitioner of their offence and therefore, the present notice dated 23.12.2014 has been issued. In view of the fact that the offense was brought to their knowledge only on 23.10.2014, the notice under Regulation 20 dated 23.12.2014 is well within time. The date of show cause notice, proposing to take action for the offense is irrelevant and only the date of receipt of the offence report is relevant and the Petitioner has violated the role entrusted to them as CHA and therefore they cannot be permitted to misuse the licence and hence, the Writ Petition is liable to be dismissed.

f. WP.Nos.8946/2015 and 17059/2015:- The petitioner company, who holds a Customers Broker Licence, had filed Bill of Entries for their clients and importers, M/s.K.S.Agency and K.H.Enterprisers, by suppressing the import of R-22 Gas cylinders through an unauthorised person E.Jaikumar. They had given voluntary statements on 30.09.2014 and 01.10.2014, stating that they had not followed the procedures under Regulation 11 of CBLR, 2013 and , that E.Jaikumar did not possess the Customs I.D Card and had not verified the antecedents of the importers and received consideration from the said E.Jaikumar for using their license. The involvement of the petitioner in smuggling R-22 gas Cylinder, which is an ozone depleting substance, is clearly established, as he had without proper verification caused the Bills of Entries to be filed in their name by a third party on receipt of consideration and thereby,

violated Regulations 11, 18 and 19 of the CBLR,2013. The licence was suspended on 19.01.2015 and after hearing the petitioner, the impugned order dated 26.02.2015 under Regulation 19(2) was passed, confirming the order of suspension. The impugned notice dated 26.02.2015 has been issued after taking into consideration that the petitioner has prima facie violated the provisions of the Customs Act and the CBLR, 2013 and hence, the impugned proceedings are sustainable. Further, the petitioner has stalled the enquiry proceedings by approaching this Court. The enquiry initiated as per the Regulations has to go on and the same has to be challenged by preferring the statutory appeal. The retention of ID card is of no consequence as the card is employer specific in terms of Regulation 17(1) of CBLR2013. If the Saturdays, Sundays and national holidays are excluded, the impugned notice is in time and therefore both the writ petitions have to be dismissed.

4. The learned counsel for the Petitioner, in W.P.Nos.15849, 3374 and 3375 of 2015, has contended that the impugned notice under Regulation 20 has been issued, beyond the statutory period of 90 days, which is mandatory in nature. The learned counsel has, further, contented that the request to keep the matter under abeyance with regard to the petitioner in W.P 15849/15 was only not to invoke Regulation 19 and pass orders of interim suspension. It is also contended that there cannot be any waiver of a statutory right and therefore, the stand of the respondent is unsustainable. It is also contended by the learend counsel on behalf of the other petitioners that the copy of the show cause notice of DRI dated 02.07.2014 with a copy marked to the petitioner was served in July 2014 itself and hence, the contention that the commission of the

offence came to the knowledge of the respondent only on 25.09.2014 is untenable. The Proceedings initiated by DRI is still pending, in so far as WP.No.3375/15 is concerned and therefore, the present proceedings are premature. The learned counsel further submitted that the impugned proceedings also prejudices the issue and therefore, it is liable to be set aside. The learned counsel has further contended that the writ petition is maintainable, as the question involved is a pure question of law and the contention that the holidays will have to be excluded, while computing the period of limitation is untenable. In support of his contentions, the learned counsel has relied upon the judgments made in **Tax Appeal No.159/2006, dated 17.07.2012 (Sapthagiri Finance and Investments Vs. Income Tax Officer)**, **Writ Appeal No.371/2015, 2014, dated 17.06.2015 (The Commissioner of Customs Vs. A.M.Ahmed & CO.), 2014 (308) ELT 410 (Bom) (GAC Shipping Vs. Union of India) , W.P No 30884/13 (order dated 19.08.2014), 2014-309-ELT-443-Madras (A.M.Ahamed & CO Vs. Commissioner of Customs, Chennai), W.P No 21941/14, 2011 (Bharat Marine Co. Vs. Commissioner of Customs) dated 15.09.2015, 2011 (266) ELT 422 SC (Oryx Fisheries Private Ltd Vs. Unino of India) and 2007 (207) ELT 168 SC (Siemens Ltd Vs. State of Maharashtra).**

5. The learned counsel for the petitioners in WP.Nos.16283 and 12401 of 2015, has contended that the show cause notice was issued by DRI on 03.03.2014 to the petitioner in W.P.No.16283/15 and a copy of the same has been marked to the respondent. The learned counsel also pointed out that the order of suspension of license was passed on 19.11.2014 and the same was also revoked on 08.01.2015 and 23.12.2014 respectively, after taking into

consideration that the offense was detected by DRI in October 2013. Hence the present notices dated 08.01.2015 and 23.12.2014 are without jurisdiction and is unsustainable. The learned counsel has contended that the period prescribed under Regulation 20 is mandatory and has relied upon the judgments reported in 2014 (309) ELT 433 (A.M.Ahamed & CO Vs. Commissioner of Customs, Chennai), 2014 (310) ELT 673 (The Commissioner of customs, Chennai Vs. CESTAT and others), 207 (218) ELT 647 (Union of India Vs. Vicco Laboratories) and AIR 1999 SC 1281 (Babu Verghese and others Vs. Bar Council of Kerala) in support of his above contentions.

6. The learned counsel for the petitioner in W.P.Nos.8946 and 17059 of 2015 has contended that the basis for initiating the present proceedings are that E.Jaikumar was not eligible to be authorised by the importers and that he has no identity card issued by the customs department. However, indisputably the said E.Jaikumar, though was not an employee of the petitioner, was authorised as he was an ex-employee and also had an identity card issued by the customs authorities. The identity card unless surrendered is valid. The Docks intelligence report was sent on 27.10.2014 to the 1st respondent and the licence was suspended by an interim order on 19.01.2015. After enquiry, the final orders were passed, suspending the license on 26.02.2015. A mere perusal of the order would disclose that the respondent has proceeded on prejudged mind. Even before initiating the enquiry, he has concluded that the offence has been committed by the petitioners and therefore, the continuation of further proceedings is a futile exercise. The

learned counsel also contended that the commission of the offence was brought to the knowledge of the respondents on 01.10.2014 itself and hence, the present proceedings under Regulation 20 are barred by law. The learned counsel also submitted that it is the date of knowledge on which the respondent comes to know about the offence that matters and therefore, the contention that the offence report was received much later is unsustainable. The learned counsel also contended that whenever a notice is issued without jurisdiction, the writ petition under Article 226 is maintainable. The learned counsel further contended that when the law requires a particular thing to be done in a particular manner, it has to be done in the same manner. The learned counsel submitted that when further proceedings are barred in law, there would be no purpose in continuation of the order of suspension. It was also further contended that the petitioner was authorised to file the bill of entries and the said Jaikumar on their behalf also verified the antecedents of the importers, which is found in the notice itself. Therefore, relying upon various judgments reported in 2007 207 ELT 168 (Siemens Ltd. Vs. State of Maharashtra), 2014 300 ELT 185 AP (SBO Steels Ltd Vs. Commissioner of Customs, Guntur), W.P 21941 of 2014 (Order dated 15.09.2014), W.P Nos 27726 and 27727 of 2014 (order dated 30.04.2015) reported in 2015 TIOL 1290 HC MAD CUS, W.P Nos 7188 and 7189/2015 (order dated 11.6.2015) reported in TIOL 1524 HC MAD CUS, 2014 309 ELT 443 (A.H.Ahamed & Co. Vs. Commissioner of Customs (Imports) chennai), 2009 242 ELT 487 Madras (NLC Ltd Vs. Union of India) , 1975 1 SCC 559 (Ramchandra Keshav Adke (dead) by Lrs and others Vs. Govind Joti chavare and others), 1980 2 SCC 554 (State of Bihar

and another Vs. J.A.c Saldanha and otahers), 1997 II CTC 507 (MSD Thenraja Vs. Executive Officer), 1998 5 SCC 749 (Nepa Agency Co Pvt Ltd and Union of India), sought for the quashing of the impugned proceedings in both the writ petitions.

7. Per contra, the learned Additional Solicitor General of India, Mr.G.Rajagopalan appearing for Mr.M.Devendran, Standing Counsel for the respondents in WP.Nos.8946 and 17059 of 2015 has vehemently contended that the petitioners, being granted license to perform the duties of the Customs department, have misused the license and have aided in smuggling goods of harmful nature. The learned ASGI also submitted that 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 are established and if the petitioners are permitted to operate, it would cause serious prejudice to the department. The learned ASGI also contended that the petitioners have permitted a third party to act on their behalf and just because he has an identity card, the same shall not absolve the petitioners from the breach of Regulation 11 and that that the writ petition is premature and is not maintainable, as the proceedings are sought to be thwarted at the preliminary stage itself. It is also contended that the proper recourse for the petitioner would be to prefer an appeal if any order is passed against him and that if the Saturdays, Sundays and the national holidays are excluded, the proceedings under Regulations 20 would be within limitation. In support of his contentions, the learned ASGI relied upon the judgment reported in 1998 5 SCC 749 (Nepa Agency Vs Union of India and Others) and the

judgment in W.P.Nos.11683,11684, 14567 and 14568 of 2014 (order dated 25.8.2014).

8. The learned standing counsel Mr.K.Mohanamurali appearing for the respondents in WP.Nos.15849, 3474 and 16283/2015, contended that the petitioners have violated the provisions of the customs Act and CBLR, 2013 and the same is evident from the voluntary statements of the persons involved in the transaction. The counsel also contended that it is only the show cause notice that has been challenged and the petitioners are duty bound to participate in the enquiry and if aggrieved they can file an appeal. The learned counsel also contended that in so far as WP.No.15849/15 is concerned, the action against the petitioner under the Regulations was not initiated, only because of the request made by the counsel for the petitioner to keep the matter in abeyance as their appeal is pending before the CESTAT, Mumbai. The learned counsel, in so far as WP.No.3374/15 is concerned, contended that instead of importing the goods, the same was sold in high seas and therefore, the provisions of Advance Authorisation Scheme have been violated. The learned counsel also contended that if the Saturdays, Sundays and national holidays are excluded, the notice would be in time. The learned counsel, in so far as WP.No.16283/15 is concerned , contended that the goods were misdescribed and undervalued. It is also contended that in any case, the provisions is only directory in nature and not mandatory and without full materials, a show cause notice could not be issued and therefore, after receiving all the documents, the present notice has been issued. In addition to the judgments relied upon by the ASGI supra, the the learned counsel also

relied upon the judgments in AIR 1952 SC 181 (Dattatraya Moreshwar Vs. The State of Bombay and others), AIR 1965 SC 895 (Raza Buland Sugar Co. Ltd Vs. Municipal Board, Rampur), 2003 8 SCC 498 (P.T.Rajan Vs. TPM Sahir), 2013 (290) ELT 3 (PML Industries Vs. Commissioner of Central Excise), 1983 2 SCC 433 A.M.Ahamed & CO Vs. Commissioner of Customs, Chennai) and sought for dismissal of the writ petitions.

9. The learned counsel Mr.RajnishPathyl, appearing for the respondent in W.P 3375/15 has contended that the present proceedings under Regulation 20 has been initiated only after prima facie case was made out against the petitioner during the enquiry. Further, the writ petition is not maintainable, as he can very well approach the CESTAT, if they are aggrieved by any order that may be passed against them. The petitioner has smuggled gold, R-22 gas and Foreign cigarettes under the guise of importing other goods during December 2013 to Jan 2014. The voluntary statements disclose the serious offences committed by the petitioner in collusion with the importers. The revocation of the order of suspension has nothing to do with the action under Regulation 20 as it is an independent provision enabling the commissioner to initiate enquiry. The learned counsel further submitted that the offence report was received on 25.09.2014 and the impugned proceedings have been issued on 23.12.2014. Hence the same is well within the period of limitation. The learned counsel also relied upon the judgment reported in 1997 9 SAC 132 (Mohan Singh Vs. IAAI) to contend that the provision is only directory.

10. The learned standing counsel Mr.V.Sundareshwaran, appearing for the respondent in WP.No.12401/15 contended that the petitioner in collusion

with the importers mis-described, mis-valued the goods and the same was found out by the DRI and that though the order of suspension was revoked, the same has been done only after reserving the right to take action under Regulation 20. The voluntary statements clearly establish a prima facie case against the petitioner. The petitioners have permitted third parties to use their license and import the goods for consideration. The learned counsel also contended that the show cause notice issued by the DRI cannot be treated as an offence report and hence, the present action taken on 23.12.2014 after the receipt of the offense report on 23.10.2014 is well within time. The learned counsel also contended that the writ petition is premature and not maintainable and relied upon the judgments in 1952 SC 181 (**Dattatraya Moreshwar Vs. The State of Bombay and others**), AIR 1965 SC 895 (**Raza Buland Sugar Co. Ltd Vs. Municipal Board, Rampur**), AIR 1975 SC 2190 (**State of Mysore Vs. V.K.Kangan**), 2003 (8) SCC 498 (**P.T.Rajan Vs. TPM Sahir**), RC.No.4 of 1997 (order dated 12.10.2000) (**Sri Kamatchi Agencies Vs. Commissioner of Customs, Chennai**) and 2014 310 ELT 673 (**The Commissioner of customs, Chennai Vs. CESTAT and others**) and sought for dismissal of the writ petition.

11. This court heard the learned counsel on either side and considered their submissions carefully and perused the materials available on record. This court is of the opinion that the following points arise for consideration for disposal of these Writ Petitions:-

(a) Whether the writ petitions challenging the show cause notice are maintainable.

(b) Whether the period of 90 days prescribed in Regulation 20(1) of CBLR,2013 are “directory” or “mandatory”.

(c) Whether the notices have been issued beyond the stipulated time.

12. **Point (a):** The learned counsel for the petitioners have contended that the impugned show cause notices have been barred by law and hence, without authority. Therefore, the writ jurisdiction under Article 226 can be invoked.

13. Per contra, on the side of the respondents, it is contended that the writ petitions are premature and when there is an alternative remedy, the writ petitions are not maintainable and the decision of the Honourable Supreme Court rendered in the case **Nepa Agency Co Pvt Ltd Vs. Union of India (1998 5 SCC 749)** was relied upon.

14. It is now settled law that the challenge to the show cause notice is not a bar, but must satisfy the following tests;

- (i) Where the notice is issued without authority/ jurisdiction.
- (ii) Where the notice is issued beyond the period prescribed by law.
- (iii) Where the notice is issued with a prejudiced mind.
- (iv) Where the issuance of the notice is itself an abuse of process of law.

15. In the decision reported in **2007 (ELT) 168 (Siemens Ltd. Vs. State of Maharashtra)**, the Honourable Supreme Court has held as under:-

“10. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including **State of UP Vs. Brahm Datt Sharma and another (AIR-1987-SC-943)**

Special Director and another Vs. Mohd. Ghulam Ghouse and another (2004-3-SCC-420) and Union of India and another Vs. Kunsetty Satyanarayana (2006-12-Scale-262), but the question herein has to be considered from a different angle, viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the courts direct the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose (See K.I. Shephard and others Vs. Union of India and others (1987-4-SCC-431: AIR-1988-SC-686). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

11. The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant, stating: (SCC p. 60, paras 48-49)

“48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard v. Union of India⁴ this Court held: (SCC p. 449, para 16)

‘It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.’

12. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.”

16. In 2011-266-ELT-422-SC (Oryx Fisheries Private Ltd Vs. Union of India), it has been held as under:-

“31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

17. In 2014-3--ELT-185-AP (SBQ Steels Limited Vs. Commissioner of Customs), it has been held as under:-

“ 21. In Shakti Me-Dor Ltd's case (supra), Bajaj Tempo Ltd case (supra), Punjab Bone Mills Case (supra) and in Charminar Nonwovens Ltd.'s case (supra), cited by the respondent's counsel, it has been held that at the stage of show cause notice, a writ petition should not be entertained where such show cause notice is not without jurisdiction. It was held that the contentions in the show cause notice should be accepted as true and after the petitioner submits its reply thereto, the adjudicating authority would decide the matter. It was also held that the High Court or the Supreme Court should be approached only after exhausting the remedies provided under the statute. Similar view has also been expressed in Dunlop India Ltd.'s case (supra). However, these cases did not deal with a situation like the present one where the show cause notice issued by the respondent is challenged on the ground that it is issued with premeditation. In Siemens Ltd's case (supra), the Supreme Court has clearly clarified that although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction, when the notice is issued with premeditation.

23. Following the judgements of the Supreme Court in Oryx Fisheries case (supra), Siemens Ltd's case (supra)

and M/s.Rajam Industries Ltd's case (supra), we therefore set aside the impugned show cause notice issued by the respondent with a direction to the respondent to issue a fresh show cause notice clearly indicating the issues on which prima facie the petitioner appears to have availed of the cenvat credit allegedly without justification. While issuing such show cause notice, the respondent should ensure that it does not indicate any premeditation or prejudgement by the respondent. In case any such fresh show cause notice is issued by the respondent, the respondent shall also furnish the material on the basis of which the show cause notice is issued and give reasonable opportunity to the petitioner to file its objections with supporting material apart from personal hearing (if sought by the petitioner) and then pass a reasoned order in accordance with law.”

18. This court, in order dated 15.09.2014 made in **W.P 21941 of 2014**, has held as under:-

“6. In the light of the categorical assertions and findings, I do not think that any useful purpose would be served in asking the petitioner to submit a reply to the show cause notice. At the stage of show cause notice, the first respondent should only have an open mind. If his mind is closed with predetermined conclusions, the requirement of giving an opportunity to show cause becomes nugatory.”

19. In **WP.No.27726/14** batch etc. by order dated 30.4.2015, this court has held as under:-

17. A perusal of the above emphasized portion, it is clear that the respondent has categorically come to the conclusion that the Customs Broker failed to fulfill the obligation cast upon them under the regulations mentioned to therein and committed professional misconduct, while acting as custom broker. Therefore, relying upon the above emphasized portion in the show cause notice, the learned counsel for the petitioner would contend that even at the stage of the show cause notice itself, the respondent has completely made up his mind and reached definite conclusion about the failure of the petitioner to fulfill the obligations cast upon them and also about the professional misconduct while acting as a Customs Broker. I find a considerable force in the contention of the learned counsel for the petitioner. In fact, this Court is well aware of the settled legal position that

the show cause notice cannot be read hyper-technically, but it is to be read reasonably and that the Writ Court should be slow and circumspect in interfering at the show cause stage, unless it is successfully proved that the Authority issuing the show cause notice is not competent or the show cause notice is outcome of malice and de hors the provisions of law, but in the present case, the emphasized portion contained (cited supra) in the impugned show cause notice, would clearly indicate that the respondent has predetermined the issue. This Court would have appreciated the respondent if she could have added atleast the words, prima facie before the sentence starting it was concluded that the Customs Broker failed to. Therefore, as rightly contended by the learned counsel for the petitioner that from a reading of the impugned show cause notice, an overall impression one gets is that the respondent has predetermined the issue.

22. Having followed the above cited judgments of the Hon'ble Supreme Court as well as this Court and in view of the above discussion, this Court is of the view that the impugned show cause notice, wherein, the usage of the words, viz., 'it was concluded that the Customs Broker failed to" as pointed out above, would clearly indicate predetermination by the respondent regarding the failure on the part of the petitioner in respect of the obligations cast upon them under the Regulations as well as committal of professional mis-conduct by the petitioner and therefore, on this ground, the impugned show cause is liable to be set aside."

20. In 2007 218 ELT 647 (Union of India Vs. Vicco Laboratories) ,

it has been held as under:-

"30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice.

The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

31. Case of the respondent that the classification of the said products having attained finality pursuant to the decision of this Court, the appellants have no jurisdiction to issue impugned show cause notice on the ground on which it has been issued and it virtually amounts to re-opening of the issue which stands concluded by the decision of this Court, and that therefore it is an abuse of process of law. The High Court after referring to the history of litigation rightly concluded that the matter stood concluded by judgments of this Court and the High Court in respondents' case.

33. However, as rightly observed by the High Court the impugned show cause notice was nothing but a repetition of the earlier show cause notices with slight variations which in no way was relatable to any different test.

34. When the factual scenario is considered in the background of the legal principles set out above, the inevitable conclusion is that the appeal is sans merit, deserves dismissal which we direct. Costs made easy. ”

21. The case of the petitioners squarely fall within the ambit of the ratio laid down in the above said cases. The contention of the petitioners itself is that the notices are barred by law and hence without authority. The judgment relied upon by the respondents in **Nepa Agency Co Pvt Ltd and the judgment reported in 1998 5 SCC 749** is not applicable to the facts of this case, as the proceedings challenged therein was an order and the court had dismissed the writ petition on the ground of alternative remedy. In the present cases, the writ petitions have been filed, questioning the authority to issue the notice and that the respondent has already predetermined the issue. Though this court is aware of its limitation, while entertaining a writ petition against a notice, the

show cause notices in the present cases are clearly predetermining the issue and when the sustainability of the notice is questioned as being barred by law, this court is of the view that directing the petitioners to submit their objections would be a futile exercise. Hence, this Court is of the view that the writ petitions are maintainable.

22. **Point (b):-** The learned counsel for the petitioners have contended that the time period prescribed in Regulation 20 (1) is mandatory and have relied upon the following judgments:-

23. This court, by judgement dated 17.07.2012 made in TC(A)No. 159 of 2006, has held as under:-

“3. Learned counsel for the assessee placed before us the decision of the Apex Court reported in 321 ITR 362 (ASST. CIT v. HOTEL BLUE MOON. In considering the failure of the Assessing Officer in issuing notice under Section 143(2), in respect of block assessment, the Apex Court held that failure to issue notice under Section 143(2) would be fatal to the assumption of jurisdiction. If an assessment is to be completed under Section 143(3) read with Section 158 BC, notice under Section 143(2) should be issued within one year from the date of filing of the block return. The Apex Court viewed that omission on the part of the Assessing Authority to issue notice under Section 143(2) could not be a procedural irregularity and hence was not curable and the requirement of notice under Section 143(2) cannot be dispensed with. Thus, in the light of the decision of the Apex Court, learned counsel for the assessee submitted that the Tribunal committed serious error in drawing an inference on mere appearance of the assessee pursuant to notice issued under Section 142(1) of the Act and on the note referring that "arguments are heard and the same will be considered for completion of assessment", that there was a waiver from the side of the assessee with reference to issue of notice under Section 143(2) of the Act. He further submitted that the Revenue does not dispute the fact that there was no notice issued under Section 143(2) before passing an order of assessment under Section 148 and the notice issued under Section 142(1) could not be treated as notice issued under Section 143(2) of the Act. He further pointed out that the

assessee requested the Assessing Officer to treat the original return filed as one filed in response to the notice issued under Section 148. Thus, he submitted that the view of the Tribunal that there was no prayer for treating the original return as return in compliance with notice issued under Section 148 of the Act is incorrect. The view of the Tribunal is totally against the decision of the Supreme Court reported in 321 ITR 362 (ASST. CIT v. HOTEL BLUE MOON), both on points of law as well as on the facts of the present case. ”

24. In 2014 309 ELT 443 Mad (A.H.Ahamed & Co. Vs.

Commissioner of Customs (Imports) chennai) it has been held as follows:-

“25. In the case on hand, it is not the contention of the respondents that the time limit prescribed in Regulation 22(1) is only directory and not mandatory. It is not even the contention of the respondents that the time limit prescribed in Regulation 22(1) need not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld.”

25. This court, in **WA.No.371 of 2015**, by order dated 17.06.2015,

has held as under:-

“2. The Learned Single Judge while passing the Impugned Order in W.P.No.30884 of 2013 on 19.08.2014 in Paragraph Nos. 25 to 28 had observed the following and resultantly allowed the Writ Petition without costs by setting aside the Impugned Order.

“25. In the case on hand, it is not the contention of the respondents that the time limit prescribed in Regulation 22(1) is only directory and not mandatory. It is not even the contention of the respondents that the time limit prescribed in Regulation 22(1) need not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld.

CONTENTION 2:

26. The second contention of the petitioner is that the importer got the dispute settled in terms of Section 127(B) of the Customs Act 1962 with the Settlement Commission. Paragraph 6.2 of the order of the Settlement Commission, relied upon by the petitioner in his affidavit reads as follows:-

“The Bench observes that the applicant has made a true and full disclosure of all the facts relating to the imported goods. Besides, he has also submitted details of post importation services/repairs undertaken by him and expenditure incurred on servicing, supply of spare parts, incidental charges, etc., which were not included in the original import value of the goods. The remittances were also made by him including service charges from India to Singapore through banking channels. His remittance transactions are thus licit transactions.”

Therefore, it is contended that when the importer has now got a clean chit from the settlement Commission, the petitioner who is only a Broker, cannot be penalised.

27. In paragraphs 25 and 26 of the Impugned Order, the first respondent has dealt with this aspect. The first respondent has rejected this contention on the ground that the Settlement Commission settled the case upon confirmation of additional amount of Customs Duty, interest and nominal fine and penalty based upon the true and the full disclosure. Therefore, the first respondent has concluded that the importer was guilty of undervaluation and that consequently, the petitioner cannot escape liability.

28. But, what the first respondent has failed to take note of, is the fact that the revocation of licence now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds.....”

26. The Learned Additional Solicitor General of India for the Appellants contends that since the Respondent/Petitioner was granted License by the Chennai Customs and where it operates as per guidelines issued by the Board through its Circular No. 09/2010 dated 08.4.2010. The Commissioner of Customs, Tuticorin through Letter dated 06.09.2012 forwarded the case to the 1st Appellant/Commissioner of Customs,

Chennai, the Licensing Authority to initiate further action against the Customs Broker for revocation of License under Regulation 22 along with his report and enclosure of documents. Only, on the basis of the report issued by the Commissioner of Customs, Tuticorin, Show Cause Notice dated 12.11.2012 was issued to the said Customs Broker by the 1st Appellant Commissioner of Customs, (Imports), Chennai under Regulation 22 of the CHALR, 2004 and thus, the Show Cause Notice was issued within 90 days from the date of receipt of report from the Commissioner of Customs, Tuticorin. As such, the ingredients of Regulation 22(1) of CHALR was not violated in the present case.”

26. In 1992 61 ELT 172 (Hargovind Das K. Joshi Vs. Collector of Customs), it has been held as under:-

“3. We are of the view that insofar as the order directing confiscation of the goods is concerned, it is unassailable in facts or in law. So also the order levying penalty is justified by facts and warranted by law. There is, however, substance in the last contention urged on behalf of counsel for the appellants. The Collector of Customs has passed an order for absolute confiscation of the imported goods without giving the appellants an option to redeem the same on payment of such fine as may be considered appropriate by him. Reliance has been placed by learned Counsel for the appellants on Section 125(1) of the Customs Act in support of the plea that the Collector had the discretion to pass such an order and he should have addressed himself to the question whether or not the discretion should be so exercised having regard to the facts and circumstances of the case. The Additional Collector of Customs who passed the order of confiscation undoubtedly had the discretion to give an option to the appellants to pay a fine in lieu of confiscation. Presumably the Additional Collector of Customs assumed that he was bound to confiscate the goods because he has not adverted to this aspect in his order. He had undoubtedly the authority under law to give an option to the importers to pay such fine as was considered appropriate by him (not exceeding the full market value of the goods in question) in lieu of confiscation of the goods. We are of the opinion that since the Additional Collector of Customs who passed the order for absolute confiscation had the discretion to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be

modified only to this limited extent.

4. We therefore direct that the matter be remitted to the Collector of Customs for this limited purpose to this limited extent as to whether or not to give an option to the importers (appellants) to redeem the confiscated goods on payment of such fine as may be considered appropriate by him in lieu of confiscation. It will be open to the concerned officer to take a decision one way or the other in accordance with law as is considered appropriate in the circumstances of the case after hearing the appellants. We have no doubt that the concerned officer will take into consideration all the relevant circumstances including the submission urged on behalf of counsel for the appellants that the goods in question, zip fasteners can at present be imported freely, for whatever it is worth.”

27. In **2009 242 ELT 487 (NLC Ltd Vs. Union of India)**, it has been

held as under:-

“32. As regards the finding that the goods are prohibited, it is clear from Notification No.20 of 1999 that Serial Number 142 deals with machinery, instruments, apparatus and appliances, as well as parts (whether finished or not) or raw materials for the manufacture of aforesaid items and their parts, required for renovation or modernisation of a fertiliser plant, and spare parts, other raw materials (including semi-finished material) or consumables stores, essential for maintenance of the fertilizer plant mentioned above. Now, the goods in question are exempt from duty wholly or partially, in exercise of the powers conferred under Section 25(1) of the Act. Therefore, it is clear from this that the import of the goods is not prohibited, but partial or whole exemption from duty is granted subject to certain conditions. According to NLC, it had complied with the conditions inasmuch as the imported goods were 'used' while revamping the fertilizer plant. The fact that subsequently a decision was taken because of the policy of the Government, which rendered the fertilizer plant unviable, would not justify a conclusion that the condition subject to which exemption from duty was granted had been violated. On the other hand, it is the case of the DRI that this issue has to be adjudicated upon. As per Section 125 of the Customs Act, if the goods are not prohibited, then the adjudicating officer shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the officer thinks it fit. It is only when it is a prohibited good that the officer has the discretion and it is open to him not to give the option to pay fine in lieu of confiscation. Therefore, the

finding of the learned Judge that the goods are prohibited is not correct and deserves to be set aside. In view of the above, the finding that the goods are prohibited is set aside.”

28. 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 Campbell" (1) 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”.

29. In 1980 1 SCC 554 (State of Bihar and another Vs. J.A.c Saldanha and others) it has been held as under:-

“17. The High Court construed the expression 'superintendence' in s.3 of the Act to mean 'general supervision of the management of the police department and does not vest the State Government with authority to decide what the police alone is authorised to decide'. There is nothing in the Act to indicate such a narrow construction of the word 'superintendence'. Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-s. (8) of s. 173 was pressed into service to show that the power of further investigation after the submission of a report under s. 173(2) would be with the officer in charge of a police station. Sub-s. (8) of s. 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a

report under s. 173(2) is submitted to Court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by s. 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police station to further investigate the case. Such a situation would be covered by the combined reading of s. 173(8) with s. 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammelled by the judiciary. It was incidentally submitted that it is an undisputed dictum of law that when a statute requires a thing to be done in a certain manner it shall be done in that manner alone and the Court would not expect its being done in some other manner (see *State of Gujarat v. Shantilal Mangaldas & Ors.*⁽¹⁾) Expounding the submission it was stated that sub-s.(8) of s. 173 clearly indicates the power of further investigation after submission of a report and that power is conferred on the officer in charge of a police station only and, therefore, the State Government was incompetent to direct further investigation. It was further contended that in view of the provision contained in s.173(8) it would not be open to the Court to so interpret the word 'superintendence' in s. 3 of the Police Act as to empower the State Government to direct investigation being done by some one other than the statutory authority envisaged by s.173(8) because such an interpretation would derogate from the principle that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. In *Ex-parte Stephen's*⁽²⁾, the principle is stated that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. Subba Rao, J. in *Patna Improvement Trust v. Smt. Lakshmi Devi & Ors.*⁽³⁾, spelt out the combined effect of the aforementioned principles thus:

"A general Act must yield to a special Act dealing with a specific subject-matter and if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way".

30. In 1997 2 CTC 507 (*MSD Thenraja Vs. Executive Officer*), it

has been held as follows:-

“24. The Cantonments Electoral Rules, 1945 Chapter VII, Rule 42 contemplates election petition and Rule 47 contemplates grounds for declaring election void and Sub-clause (a)(ii) of Rule 47 talks of improper acceptance or refusal of nomination paper. Therefore, when a statute contemplates a remedy to a person aggrieved of rejection of nomination paper, it is settled law when the scheme of the Act and the Rules prescribed thereunder contemplates that a specific act should be done in a particular manner, it has to be done only in that manner and in no other way. It is also settled in law, when the disputed questions of facts require evidence and a remedy has been provided, this court under Article 226 should not venture to decide such disputed questions of facts. ”

31. 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."

32. 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.”

33. Per contra, the learned counsel for the respondents have relied upon the following judgments to contend that the period prescribed is only directory and not mandatory.

34. 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.

35. 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.”

36. The Honourable Supreme Court in **2003-8-SCC-498 (P.T.Rajan Vs. TPM Sahir)** 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. Provisions requiring statutory functionary to perform a statutory function within the prescribed time to be considered as directory.

37. 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.

38. 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.

39. 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. "

40. 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".

41. 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...”

42. 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.

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. "

43. 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."

44. 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 cut 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.”

45. 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.

46. 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 contemplates 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.

47. 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."

48. 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.

49. 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 all 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.

50. 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”.

51. **Point (c):-** In all the cases, the impugned notices have been issued after 90 days from the date of knowledge of the offence. 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,
- (c) the petitioner in WP.No.15849/2015 had sought for extension of time through his counsel and

(d) the notices in WP.Nos.3375 and 12401/15 are within 90 days.

52. This court is of the considered view that the above objections are unsustainable for the following reasons viz.

(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 .

and upon perusal of the letters of the counsel for the petitioner in WP.No.15849/2015, this Court is unable to come to a conclusion that the request to keep the matter in abeyance, pending appeal was a request amounting to waiver of the period under Regulation 20.

53. In the judgment of the Division Bench of this Court in **TC(A)No. 159 of 2006**, it has been held in paragraph 11 as under:-

"11. As rightly pointed out by the learned counsel for the assessee placing reliance on the decision reported in 118 ITR 326 (MOTILAL PADAMPAT SUGAR MILLS CO., v. STATE OF U.P.,) it is difficult to find any material which would justifiably enable this Court to affirm the view of the Tribunal that there was an conscious act with knowledge to waive such right of notice being served on the assessee. The Apex Court pointed out that there can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. There is nothing on record to show or one could read from the letter written by the assessee dated 18.12.2002 that the assessee

abandoned such right of a notice under Section 143(2) of the Act. In the light of the above, we reject the Tribunal's reasoning.”

54. From the above judgment, what can be derived is that the waiver must be specific and the person must have knowledge about the consequences of such waiver. In the present case, there is no waiver either express or by implication.

55. The show cause notices relating to offences in WP.Nos.3375 and 12401/15 were first issued on 02.07.2014 by DRI and a copy was also marked to the respondent. Based on the same, the Commissioner has appointed the Additional Commissioner of Customs (Imports), Chennai as common adjudicating authority. It is referred to in the letter dated 17.09.2014 issued by the DRI, Chennai. Hence, this court is of the view that the notice issued by the respondent is without jurisdiction, as it has been issued beyond the period prescribed in the regulations, which have statutory force.

56. It was contended by Mr.V.Sundareswaran that the discretion to condone the delay is available with this court and reliance was also placed upon the **Judgment in 1998 (7) SCC 123**. The Hon'ble Supreme Court in the Judgment reported in **2013 (10) SCC 765** has held thus:-

“It is a settled legal proposition that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice, but to enforce it giving full effect to the same. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a

statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” (See :The Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529; and Rohitas Kumar &Ors. v. Om Prakash Sharma &Ors., AIR 2013 SC 30) In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable.”

Hence, this court is unable to accept the said contention in view of the decision of the Honourable Supreme Court cited above and this court has already upheld the validity of the period of limitation as mandatory. It is only when the provision is strictly adhered to the object can be achieved. Moreover, such an exercise would open the Pandora box. Hence, this court is not inclined to exercise the discretion in favour of the respondents.

57. In view of the above, the impugned proceedings in all the writ petitions are liable to be set aside. In so far as WP.No.8946/15 is concerned, since this court has held that no further proceedings can be initiated under Regulation 20, this court is of the view that there would be no purpose in permitting the respondent to continue the suspension and hence, the impugned order in WP.No.8946/15 is also liable to be set aside.

58. In the result, these Writ Petitions are allowed, setting aside the impugned orders in all the Writ Petitions. No costs. Consequently, the connected MPs are closed.

27.10.2015

Index:Yes/No
Web:Yes/No
Srcm

To:

1. The Commissioner of Customs (Imports), Customs House, No.60, Rajaji Salai, Chennai-1
2. The Inquiry Officer/Assistant Commissioner of Customs, Customs House, No.60, Rajaji Salai, Chennai-1

Note to Office:-

Issue on 2.11.2015

B/o
Srcm