IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 15.11.2019
DELIVERED ON 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.3366, 1855, 18041, 18060, 6755, 18755, 22154 of 2019, 31383 of 2018, 27948,28726, 28850, 28858 of 2019 (12 W.Ps.)
and
WMP Nos.3649, 11500, 17437, 17438, 17440, 17450, 2065, 7560, 18104, 21423, 6167, 27535, 28478, 28594, 28599 of 2019 and 36570 of 2018

1 M/S.KTR LOGISTICS SOLUTIONS
PVT LTD REPRESENTED BY ITS DIRECTOR V.RAMU
NO.1 TANK STREET 3RD CROSS LAKSHMI PURAM
CHROMPET CHENNAI-600 044
... PETITIONER in WP No.3366 of 2019

1 M/S.HERA SHIPPING SOLUTIONS
PVT.LTD. NEW NO.18 ID NO.9/1 2ND FLOOR
JAFFAR SYRANG STREET CHENNAI 600 001. REP.
BY ITS DIRECTOR MS.HEMA AMBUJAM.
... PETITIONERs in WP No.18041 & 1855 of 2019

1 M/S.YASH SHIPPING
SERVICES OLD NO 12/ NEW NO 25 1ST FLOOR
ANAGAPPA NAICKEN STREET CHENNAI-1
... PETITIONER in WP No.18060 of 2019

1 M/S.TRANSAEROMARINELMEX SOLUTION
PRIVATE LTD. REP. BY ITS DIRECTOR
MR.A.VINOTH NO.63 3RD FLOOR OM SRI SAI RAM
PLAZA NO.75 THAMBU CHETTY STREET MANNADAY
CHENNAI 600 00 ... PETITIONER in WP No.6755 of 2019

1 M/S.EIFFEL LOGISTICS PVT LTD
1ST FLOOR NORTH BEACH ROAD 4TH LINE CLIVE
BATTERY VOC NAGAR CHENNAI-1 REP BY ITS
DIRECTOR MRS. S. JAYASREE.
... PETITIONER in WP No.18755 of 2019

1 M/S.POORVIKAS SHIPPING SERVICES OLD NO. 76 NEW NO. 80 ANP COMPLEX 2ND FLOOR MOORE STREET CHENNAI 600 001 REP. BY ITS PROPRIETOR G. SURESH

... PETITIONER in WP No.22154 of 2019

1 M/S.POORVIKAS SHIPPING SERVI CES OLD NO.76 NEW NO.80 ANP COMPLEX 2ND FLOOR MOORE STREET CHENNAI-600 001 REP BY ITS PROPRIETOR G.SURESH

... PETITIONER in WP No.31383 of 2018

1 M/S.CAREWELL SHIPPING PVT. LTD. REP. BY ITS DIRECTOR - CUM-CHAIRMAN SHRI.G.R.SEETHABATHY OLD NO.48 RAJAJI SALAI 3RD FLOOR CHENNAI 600 001.

... PETITIONER in WP No.27948 of 2019

1 M/S.UNIQELINE NEW NO. 14 3RD FLOOR JAFFER SYRANG STREET BEHIND COLLECTORS OFFICE CHENNAI 1 REP BY ITS PROPRIETOR A.PRABHAKARAN

... PETITIONER in WP No.28726 of 2019

1 BHARAT IMPEX SYSTEMS REPRESENTED BY ITS PROPRIETOR MR.K.R. RANGANATHAN AGED 64 YEARS 3-C SRIDEV APRTS. III FLOOR 65 FIRST MAIN ROAD C.I.T. NAGAR CHENNAI 600 035

... PETITIONER in WP No.28850 of 2019

1 LEO FORWARDERZ NEW NO. 18 OLD NO. 325 IST FLOOR THAMBU CHETTY STREET CHENNAI 600 001 REP. BY ITS PARTNER N. RAMESH ... PETITIONER in WP No.28858 of 2019

Vs

1 THE COMMISSIONER OF CUSTOMS CHENNAI VIII COMMISSIONERATE CUSTOM HOUSE 60 RAJAJI SALAI CHENNAI - 600 001.

2 THE INQUIRY OFFICER / DEPUTY COMMISSIONER OF CUSTOMS AIR CARGO COMPLEX AIR COMMISIONERATE NEW CUSTOME HOUSE MEENMBAKKAM CHENNAI - 600 027.

... RESPONDENTs in WP No.3366 of 2019

1 THE COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE
NO.60 RAJAJI SALAI CUSTOM HOUSE
CHENNAI-600 001 ... RESPONDENT in WP No.1855 of 2019

1 THE COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE CUSTOMS HOUSE
NO.60 RAJAJI SALAI CHENNAI 600 001.

2 ADDITITIONAL COMMISSIONER
OF CUSTOMS CHENNAI IV COMMISSIONERATE
CUSTOMS HOUSE NO.60 RAJAJI SALAI
CHENNAI 600 001. ... RESPONDENT in WP No.18041 of 2019

1 THE COMMISSIONER OF
CUSTOMS (CHENNAI- VIII) CUSTOM HOUSE NO 60
RAJAJI SALAI CHENNAI-1
... RESPONDENT in WP No.18060 of 2019

1 COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE CUSTOM HOUSE
NO.60 RAJAJI SALAI CHENNAI 600 001.

2 ASSISTANT COMMISSIONER OF
CUSTOMS (CBS) CHENNAI VIII COMMISSIONERATE
CUSTOM HOUSE NO.60 RAJAJI SALAI CHENNAI
600 001.

3 THE INQUIRY OFFICER
ASSISTANT COMMISSIONER OF CUSTOMS (UCC)
CHENNAI VIII COMMISSIONERATE CUSTOM HOUSE NO.
60 RAJAJI SALAI CHENNAI 600 001.
... RESPONDENTs in WP No.6755 of 2019

1 THE COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE NO 60 RAJAJI
SALAI CUSTOM HOUSE CHENNAI-1
... RESPONDENT in WP No.18755 of 2019

1 THE COMMISIONER
OF CUSTOMS CHENNAI VIII COMMISSIONERATE NO.
60 RAJAJI SALAI CUSTOM HOUSE
CHENNAI 600 001.

2 THE INQUIRY OFFICER
ASSISTANT COMMISSIONER OF CUSTOMS AUDIT
COMMISSIONERATE NO. 60 RAJAJI SALAI CUSTOM
HOUSE CHENNAI 600 001.
... RESPONDENT in WP No.22154 of 2019

1 THE COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE NO.60 RAJAJI
SALAI CUSTOM HOUSE CHENNAI-600 001
... RESPONDENT in WP No.31383 of 2018

1 COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE CUSTOM HOUSE
NO.60 RAJAJI SALAI CHENNAI 600 001.

2 ASSISTANT COMMISSIONER OF
CUSTOMS (CBS) CHENNAI VIII COMMISSIONERATE
CUSTOM HOUSE NO.60 RAJAJI SALAI CHENNAI
600 001.

3 THE INQUIRY OFFICER
ASSISTANT COMMISSIONER OF CUSTOMS (AM CH-
IV) CHENNAI IV COMMISSIONERATE CUSTOM HOUSE
NO.60 RAJAJI SALAI CHENNAI 600 001.
... RESPONDENT in WP No.27948 of 2019

1 THE COMMISSIONER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE NO.60 RAJAJI
SALAI CUSTOM HOUSE CHENNAI 1
... RESPONDENT in WP No.28726 of 2019

1 THE PRINCIPAL COMMISSIONER
OF CUSTOMS (CHENNAI-VIII) CUSTOM HOUSE NO
60 RAJAJI SALAI CHENNAI 600 001.

2 THE DEPUTY COMMISSIONER OF
CUSTOMS CHENNAI II COMMISSIONERATE CUSTOM
HOUSE NO 60 RAJAJI SALAI CHENNAI 600 001.
... RESPONDENT in WP No.28850 of 2019

1 THE COMMISSIONNER OF CUSTOMS
CHENNAI VIII COMMISSIONERATE NO. 60 RAJAJI
SALAI CUSTOM HOUSE CHENNAI 600 001.
... RESPONDENT in WP No.28858 of 2019

Prayer in WP No.3366 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to impugned order-in-original No.40748/2015 dated 13.8.2015 passed by the 1st respondent in F.No.R-114/2010-CBS passed by the 1st respondent and quash the same.

Prayer in WP No.1855 of 2019

Writ Petition filed under Article 226 of the Constitution of India issue a Writ of Certiorari to call for the records pertaining to order in original Job No.66850/2018 dated 31.12.2018 passed by the respondent herein and to quash the same, in so far as the said order for continuation of the suspension of the license No.R-273/13-CHA of the petitioner company M/s.Hera Shipping Solutions Private Limited (PAN No AACCH6260L) in terms of Regulation 12(2) of Customs Broker Licensing Regulations 2018 is without jurisdiction and without following the due procedures of law and in excess of the powers conferred with the respondent and in gross violation to the fundamental rights of Art.19(1)(g) r/w Art.301 guaranteed to the petitioner under the Constitution of India.

WP No.18041 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records leading to the issuance of the Show cause Notice dated 23/05/2019 vide F.No.R273/2013- CHA modifited by Corrigendum dated 12/06/2019, by the 1st respondent, quash the same and consequently direct the respondents to reinstate the license of the petitioner vide no Customs Broker License bearing No.CHN/R-273 /2013 - CHA.

WP No.18060 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to Calling for the records relating to the Impugned order in Original No 69098/2019 dated 23.5.2019 issued by the Respondent and quash the same.

WP No.6755 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to Call for the records pertaining to the impugned show cause notice dated 05/11/2018, in F.No.R-416/2017 - CBS issued by the 1st respondent and quash the same.

WP No.18755 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records Pertainnign to order in Original No 68140/2019 dated 27.3.2019 passed by the Respondent herein and to quash the Same, to the Extent of Imposition of Penalty of Rs 50,000 under Regulation 14 and 18 of CBLR 2018 as against the Petitioner company/ Customs broker M/S.EIFFEL Logistics Pvt Ltd Holding license No CHN/R-359/2016-CBS (PAN NO AAECE1545K) as the said order of Imposition of penalty is without Jurisdiction and without Following the due Procedures of Law and the Regulations Under CBLR, 2018 and in excess of Powers conferred with the respondent and in gross violation to the Principales of Natural justice and the fundamental rights guaranteed to the Petitioner under the Const

WP No.22154 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records pertaining to show cause Notice dated 20.12.2018 in F.No.R-79 / 2010-CHA / CHN (Case File) and to quash the same, in so far as, the show cause notice has become void ab-initio due to the fact that no further proceedings has been carried out in terms of Regulation 17(5) and 17(7) of CBLR, Which mandated the submission of inquiry report by the 2nd respondent within 90 days from the date of issuance of show cause notice and the further order to be passed by the 1st respondent / commissioner within 90 days from the date of issuance of inquiry report and non-compliance of the same vitiates further proceedings under the impugned show cause notice

WP No.31383 of 2018

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent connected with order of suspension dated 12/10/2018 in F.No.R-79/2010/CHA/CHN, license of the petitioner M/s.Poorvikas Shipping Services (PAN No.AQXPS6860PCH001) passed in terms of Regulation 16(1) of CBLR 2018 r/w. Regulation 19(1) of CBLR 2018 and also the consequent order in original no.66133/ 2018 dated 20/11/2018 passed by the respondent ordering for continuation of the suspension of the license No.R-79/2010/CHA/CHN of the petitioner M/s.Poorvikas Shipping Services (PAN No.AQXPS6860PCH001) in terms of Regulation 16(2) of CBLR, 2018 read with Regulation 19(2) of CBLR, 2013 and quash the same, in so far as, both the orders have been passed without jurisdiction and authority of law and without following the due procedure of law and in excess of the

Powers conferred with the Respondent and in gross violation to the Principles of Natural Justice and the Fundamental Rights guaranteed to the Petitioner under the constitution.

WP No.27948 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to Call for the records pertaining to the impugned show cause notice dated 23/02/2018 in F.No.R.46/CHA issued by the 1st Respondent and quash the same.

WP No.28726 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to Show Cause Notice dated 14.9.2018 in F. No. R-66/ 2010-CHA/ CHN and to quash the same, in so far as, the show cause notice has become void ab-initio due to the fact that no further proceedings has been carried out in terms of Regulation 17 (5) and 17(7) of CBLR, which mandates the submission of inquiry report by the inquiry officer within 90 days from the date of issuance of Show Cause Notice and the further order to be passed by the respondent / commissioner within 90 days from the date of issuance of inquiry report and non-compliance of the same vitiates further proceedings under the impugned show cause notice

WP No.28850 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records of the first respondent herein under Reference file No. R-627 / CBS (Case file) and culminating in the issue of show Cause Notice dated 07.08.2019 from File No.R 627 / CBS (Case file) and quash the same and thus render justice

WP No.28858 of 2019

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records pertaining to show cause Notice dated 03.05.2018 in CHN / R 03 / 09-CBS and to quash the same, in so far as, the swho cause notice was not issued within the mandatory time period as tipulated under Regulation 20(1) CBLR 2013 as also the impugned SCN has become void ab initio due to the fact that no further proceedings has been carried out in terms of Regulation 20(5) and 20(7) of CBLR, which mandates the submission of inquiry report by the inquiry officer within 90 days from the date of issuance of show cause Notice and the further order to be passed by the respondent/commissioner within 90 days from the dated of issuance of inquiry report and non compliance of the same vitiates further proceedings under the impugned show cause Notice.

For Petitioner : Mr.Hari Radhakrishnan
in W.Ps.3366, 6755, 27948/19

Mr.S.Baskaran in W.P.No.1855, 18755, 22154,28726, 28858 of 2019 and 31383 of 2018

Mr.Hari Radhakrishnan
for Mr.A.Mohammed Ismail
in W.P.18060/19

Mr.S.Santhosh
for Mr.P.Giridharan in W.P.18041/19

Mr.R.Mansoor Ilahi
for Mr.S.Murugappan in W.P.28850/19

For Respondents: Mr.V.Sundareswaran
Standing Counsel
in W.Ps.28858, 28850, 28726, 6755/2019

Mr.K.S.Ramasamy
Standing Counsel
in W.Ps.3366, 18060, 18755 of 2019

Mr.N.Senthil Kumar in
W.P.18041 of 2019
Standing Counsel

Mr.M.Santhanaraman in W.P.No.27948/19
Standing Counsel

Mr.Rajasekar in W.P.No.22154 of 2019
for Mrs.R.Hemalatha
Senior Standing Counsel

Mr.Rajasekar in W.P.No.31383 of 2018
for Mr.A.P.Srinivas
Standing Counsel

Mr.T.L.Thirumalaisamy in
W.P.1855 of 2019
Standing Counsel

COMMON ORDER

All these petitioners are Customs House Agents/Customs Brokers. They are issued with licence under the provision of Custom House Agents License Regulations, as existed at the relevant period. Since a common issue is raised in these writ petitions, while challenging the respective impugned proceedings, all these writ petitions are heard together and disposed of by a common order, as hereunder.

2. The relevant facts touching upon the the issue raised in each of the writ petition, are as follows:

a) W.P.No.3366/2019- Challenge made is against the Order in Original dated 13.08.2015, revoking the license of the petitioner issued under the Customs Brokers Licensing Regulations, 2013. The points raised in this writ petition are that,

i) Enquiry Officer issued the report beyond 90 days from the date of issuance of the show cause notice and

ii) The Commissioner has not passed orders within 90 days from the date of the enquiry report and therefore, the impugned order passed beyond the period of limitation cannot be sustained. Thus, the action of the Authorities violated Regulation 20(5) and 20(7) of CBLR, 2013.

b) W.P.No.1855 of 2019:

This writ petition is filed challenging the order of suspension of the license dated 31.12.2018. However a show cause notice dated 23.05.2019 is issued subsequently to cancel the license and the same is challenged in W.P.No.18041 of 2019.

c) W.P.No.18041 of 2019:-

The challenge made in this writ petition is against the show cause notice for cancelling the license. The point raised against the show cause notice is that the same was issued beyond the period of 90 days from the date of offence report and therefore, it violates Regulation 17(1) of CBLR 2018. The offence Report was made on 08.11.2018 whereas the show cause notice was issued on 23.05.2019.

d) W.P.No.18060 of 2019:-

Challenge made is against extending the suspension of the license. Interim suspension was made on 29.04.2019. As per Regulation 16 of 2018 Regulations, an order continuing the suspension should have been passed within 15 days from the date of personal hearing. Personal hearing was conducted on 10.05.2019. However, the impugned order continuing the suspension was passed on 23.05.2019, which is beyond the period of 15 days.

e) W.P.No.6755 of 2019:-

Challenge made is against show cause notice dated 05.11.2018. The point raised in this writ petition is that the enquiry report was not filed within 90 days from the date of show cause notice. Till this date, the enquiry report is not filed. Therefore, Regulation 17(5) of 2018 Regulation is violated.

f) W.P.No.18755 of 2019:

The challenge made is against imposing penalty. Points raised in this writ petition against the impugned order dated 27.03.2019 are that

i) show cause notice was issued beyond 90 days from the date of offence report. Offence Report was furnished in November 2017 whereas the show cause notice was issued on 20.08.2018 after a period of two months. Thus, Regulation 17(1) of CBLR 2018 is violated.

ii) Enquiry Report should be filed within 90 days from the show cause notice as per Regulation 17(5). In this case, the enquiry report was filed on 23.01.2019, beyond 90 days. Therefore, the impugned proceedings was passed in violation of the Regulation 17(1) and Regulation 17(5) of CBLR 2018 .

g) W.P.No.22154 of 2019 is against show cause notice dated 20.12.2018. Points raised against the impugned show cause notice are that,

i) Enquiry report was not filed within 90 days from the date of show cause notice. Thus, Regulation 17(5) is violated. Show cause notice was issued on 20.12.2018 whereas enquiry report was filed on 30.07.2019.

ii) The Commissioner should have passed final order under Regulation 17(7) within 90 days from the receipt of the Enquiry Report. Till this date, no such order is passed, in the absence of any legal impediment against the Commissioner to pass such order. Therefore, entire proceedings are vitiated on the ground of limitation.

h) W.P.No.31383 of 2018 is filed against the impugned order of suspension dated 20.11.2018. However, subsequently, a show cause notice for revocation is issued and the same is put to challenge in W.P.No.22154 of 2019. Therefore, the issue raised in this writ petition got merged with W.P.No.22154 of 2019.

i) W.P.No.27948 of 2019: Challenge made in this writ petition is against the show cause notice dated 23.02.2018. The points raised against the impugned show cause notice are that,

i) the Enquiry Report was submitted beyond 90 days from the date of show cause notice;

ii) The Commissioner has not passed the final order within 90 days from the submission of the Enquiry report. Therefore, Regulations 20(5) and 20(7) of CBLR 2013 are violated.

j) W.P.No.28726 of 2019 is filed against show cause notice dated 14.09.2018. The point raised against the impugned show cause notice is that the Enquiry report has to be given within 90 days from the date of show cause notice. In this case, no report is given till this date. Therefore, Regulation 17(5) and Regulation 17(7) are violated. This Court has granted status quo only on 30.09.2019. But the Authorities have not acted in accordance with the Regulation within the time stipulated therein even before the grant of status quo.

k) W.P.No.28850 of 2019 is filed against the show cause notice dated 07.08.2019. The point raised against the said show cause notice is that the same was issued beyond 90 days from the date of offence report. Therefore, Regulation 17(1) of 2018 Regulations is violated. Offence Report was made on 28.03.2019, whereas show cause notice was issued on 07.08.2019.

l) W.P.No.28858 of 2019 is filed against the show cause notice dated 03.05.2018. The points raised against the show cause notice are that,

i) the same was issued beyond 90 days from the date of offence report. The offence report was made on 31.01.2018 whereas show cause notice was issued on 03.05.2018. Therefore, Regulation 20(1) of 2013 Regulations is violated.

ii) The Enquiry report should have been submitted within 90 days from the date of the show cause notice however, no such report is filed so far. Therefore, Regulations 20(5) and 20(7) are violated.

3. In some cases, counter affidavit is filed, wherein the respondents have narrated the facts and circumstances under which the impugned proceedings were issued. Therefore, they want to justify and sustain the impugned action. However, in so far as the facts placed by the respective petitioners regarding the dates and events viz., date of offence report, date of issuance of show cause notice, date of enquiry report, date of issuing the impugned proceedings are not disputed by the respondents.

4. The main contention of the petitioners in all these cases is that the time prescribed under the Regulations for doing each act is mandatory and therefore, if no such act is done within the time prescribed, the same cannot be sustained.

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

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

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

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

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

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

b) The Division Bench order passed by this Court in W.P.(MD) No.11986 of 2018, etc., dated 19.07.2018, holding time prescribed under the provision under Section 14 of the SARFAESI Act, cannot be applied to the present case by the Revenue, since the facts and circumstances are different therein and the parties therein are not affected by any consequences. Moreover, the said order was issued taking note of the public interest.

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

6. In support of the above contentions, the learned counsel for the petitioners relied on the following decisions:

i) Order made in W.P.No.26923 and 26934 of 2018 dated 22.11.2018;

ii) 2016 (338) ELT 347 (Del) DB, Impexnet Logistic vs. Commissioner of Customs (General)

iii) 2014 (310) ELT 673 (Mad DB), Commissioner of Customs (Seaport Import), Chennai vs. CESTAT, Chennai;

iv) a Division Bench decision of this Court made in CMA No.730 of 2016 dated 13.10.2017.

v) 2016 (340) ELT 119 (Del), Overseas Air Cargo vs. CC;

vi) 2016 (337) ELT 41 (Del), Indian Carrier P. Ltd. vs. CC;

7. Per contra, the contentions of the learned counsels appearing for the respondents are as follows:

a) The limitation prescribed under the relevant regulations is not mandatory, since no consequence follows for not following the time limit. In other words, the relevant regulations do not stipulate any consequence, if a particular Act is not done within the time limit prescribed in the regulation. Therefore, the time limit prescribed is only directory and not mandatory as claimed by the petitioners. The power to issue regulations emanates under section 146 of the Customs Act which deals with the issuance of license to the petitioners. The said provision does not stipulate any time limit. The regulations are delegated legislation and therefore, they cannot go beyond the parent Act. When the parent Act does not prescribe any time limit, any stipulation made for time limit in the regulations cannot go beyond the parent Act. The petitioners have violated the conditions of license and therefore, they cannot be the persons affected by the impugned proceedings. It is not a fundamental right to get the license and do the business. Only when the consequence is spelt out in the regulations itself, the time limit prescribed could be treated as mandatory. In W.P.No.27948/2019, the enquiry report was made ready on 23.05.2018 within 90 days from the date of the show cause notice. Because of the petitioner's non-cooperation, the time schedule could not be adhered to. Regulations are only procedural laws and therefore, prescription of time limit therein is only directory. In W.P.No.31383/2018, the time limit is fully complied with. The suspension order was issued within one month from the date of receipt of the offence report. The continuation of the suspension order was issued on 20.11.2018. Therefore, the prayer sought for in W.P.No.31383/2018 challenging the suspension has become infructuous in view of the issuance of the show cause notice on 20.12.2018 which is challenged in the subsequent W.P.No.22154/2018. In W.P.No.18041/2018, the offence report was received by the respondent on 13.11.2018 and not on 16.11.2018 as contended by the petitioner. The challenge made in this writ petition against the show cause notice is premature and therefore, the writ petitions are not maintainable.

8. In support of the above contentions, the learned counsel relied on the following decisions:
(i)2018(362) ELT 947 (CAL), OTA FALLONS FORWARDERS P LTD VS. UOI;
(ii) Manu/WB/0814/2016, ASIAN FREIGHT VS. PRINCIPAL COMMISSIONER;
(iii) 2018(361) ELT 321, BOM DB, PRINCIPAL COMMISSIONER VS. UNISON CLEARING P LTD.;
iv) the Division Bench decision of this Court made in W.P.(MD) No.11986 of 2019, etc., in the case of C.Bright vs. District Collector, Nagercoil, dated 19.07.2019.

9. Heard the learned counsels for the petitioners and the learned counsels for the respondents. Perused the materials placed before this Court.

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

11. Before answering the above said question, it is better to understand the provisions under the Customs Brokers Licensing Regulations, 2013 and 2018, which are relevant for the present case. There is no dispute to the fact that the relevant

provisions under both regulations are pari materia. Thus, it is seen that Regulation 16(1) of 2018 Regulations and 19(1) of 2013 Regulations are pari materia with each other. For the sake of convenience, I refer 2013 regulations. The regulation 19 deals with the suspension of the customs broker license. It reads as follows:

> "19.Suspension of licence:
> (1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending contemplated.
> (2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:
>
> Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20."

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

> 20.Procedure for revoking licence or imposing penalty.
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.
> (2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no

such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs."

13. Perusal of the above Regulations would show that the Authority, who suspends the license/revokes the license/imposes penalty, should act/issue certain proceedings within the time stipulated therein. Under 19(1) of 2013 Regulations, the Commissioner of Customs is empowered to suspend the license in an appropriate case, where immediate action is necessary and where an enquiry against such agent is pending or contemplated. It is further seen that if a license is suspended under Sub Regulation (1) of Regulation 19, the Commissioner shall give an opportunity of hearing to the customs broker within 15 days from the date of suspension of license and pass such order, as he deems it fit, either revoking the suspension or continuing it within15 days from the date of hearing granted to such customs broker. In case, the Commissioner passes an order for continuing the suspension, further procedure thereafter shall have to be followed as provided under Regulation 20.

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

given to the customs broker in person by the Commissioner of Customs.

15. Perusal of the above Regulations thus would show that at every stage, a time limit is fixed for the authorities concerned to act. The question as to whether the time limit prescribed in the regulations is mandatory or not, has been considered by this Court in W.P.Nos.26923 and 26934 of 2018 (Carewell Shipping Pvt. Ltd vs Commissioner of Customs) dated 22.11.2018. This Court, after considering the scope of the relevant regulation and the time frame fixed therein and also after following the Division Bench decision of the Delhi High Court in a case reported in 2016 (338) ELT 347, (Del), Impexnet Logistic vs Commissioner of Customs (General) and the Division Bench decision of this Court made in CMA No.730 of 2016 dated 13.10.2017, found that the time limit fixed is mandatory and that the Enquiry Report filed beyond the period of 90 days cannot be considered as a valid report and consequently, further proceedings cannot be allowed to go as a follow up action. The relevant findings rendered at paragraphs 7 to 12 of the said order of this Court read as follows:

> "7. The challenge made in these two writ petitions is against the show cause notice and the order of suspension of the petitioner's customs broker license. The prime contention of the petitioner against the show cause notice is that the third respondent/Inquiry Officer has failed to file the report within 90 days from the date of issuance of the show cause notice and therefore, the entire proceedings are vitiated. There is no dispute to the fact that the show cause notice was issued on 13.04.2018. It is also not in dispute that the petitioner filed their reply and participated in the inquiry on 25.04.2018. However, the third respondent prepared the report only on 14.08.2018, which is evident from the perusal of the said report itself, made available in the typed set of papers. Therefore, it is clear that the third respondent has prepared the said report on 14.08.2018, which is undoubtedly beyond the period of 90 days from the date of issuance of the show cause notice. At this juncture, it is relevant to quote Regulation 20(5) of the said Regulations, which reads as follows:
>
> "20.Procedure for revoking licence or imposing penalty.

...(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1)."`

8. Perusal of the above Regulation clearly indicates that such report on conclusion of the inquiry shall be prepared and submitted within a period of 90 days from the date of issue of notice under Sub Regulation (1). It is contended by the respondents that the time stipulated under Regulation 20(5) for filing such report is only directory and not mandatory. The very same issue was considered by the Division Bench of the Delhi High Court in a case reported in 2016 (338) ELT 347 (Del), Impexnet Logistic vs Commissioner of Customs (General). The Delhi High Court at paragraph Nos. 6 to 10 has observed as follows:

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

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

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

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

7. This Court has consistently emphasised the mandatory nature of the aforementioned time limits in several of its decisions. These include the decision in Schankar Clearing & Forwarding v. C.C. (Import & General) 2012 (283) E.L.T. 349 (Del.), the order dated 25th April, 2016 passed by this Court in Customs Appeal No. 14/2016 (Commissioner of Customs (General) v. S.K. Logistics) and the order dated 29th April, 2016 in W.P.(C) No. 3071/2015 (Sunil Dutt v. Commissioner of Customs (General) New Customs House). The same position has been reiterated by the Madras High Court in Sanco Trans Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai (2015) 322 E.L.T. 170 (Mad.) and Commissioner v. Eltece Associates 2016 (334) E.L.T. A50 (Mad.)."

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

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December, 2013, i.e. beyond the mandatory period of 90 days

from the date of receipt of the offence report by the Respondent, i.e. 31st January 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN.

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

9. The other decision relied on by the petitioner is the decision made in CMA No.732 of 2016 dated 13.10.2017 by the Division Bench of this Court. In the said decision, the Division Bench, after following the Delhi High Court decision reported in 2016 (337) ELT 41 (Del), Indair Carrier Pvt. Ltd vs Commissioner of Customs (General), has observed at paragraph No.42 as follows:

"42. Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored."

10. Perusal of the above said decisions of this Court and the Delhi High Court would show that the time stipulated under the Regulations for issuing the show cause notice as well as the filing report is not directory and on the other hand, it is mandatory. No other contra decisions are placed before this Court by the learned counsel for the respondents. Even the decision, which he sought to rely made in W.P.Nos.19312 and 19313 of 2016 dated 13.07.2016, is not relevant to the present facts and circumstances, since in that case this Court has considered the question as to whether the respondent therein had sufficient power to sustain the license invoking Regulation 19(1) of the Regulations. In this case, the petitioner has raised the issue on the time limit fixed under Regulation 20(5) and not 19(1). When the facts placed before this Court are very clear that the report itself was prepared and filed beyond 90 days as statutorily required and when the decision of this Court and the Delhi High Court clearly indicate that such time limit fixed is mandatory, this Court is of the view that the report so filed beyond the period of 90 days cannot be

considered as a valid report and consequently further proceedings cannot be allowed to go as a follow up action.

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

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

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

17. It is further seen that before introducing the Regulations, Circular No.9/2010 dated 08.04.2010 was issued by the Central Board of Excise and Customs, New Delhi, wherein at paragraph No.7.1, it is stipulated that an overall time limit of 9 months is given from the date of receipt of offence report by prescribing time limits at various stages of issue of show cause notice, submission of enquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs and for passing an order by the Commissioner of Customs. The said Circular NO.9/2010 was considered by the Division Bench of this Court in a case reported in 2014 (310) ELT 673 (Mad), Commissioner of Customs (Sea Port Import) vs. CESTAT, Chennai, wherein the Division Bench has observed that it is not open to the Revenue to take a contra stand in respect of the time limit prescribed, since the Board Circular issued by the Central Board of Excise and Customs is binding on the Revenue.

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

19. Another Division Bench decision of this Court in an order made in CMA No.730 of 2016 dated 13.10.2017, while answering the question whether or not the belated show cause notice issued beyond 90 days would be fatal to the entire proceedings, has observed that the limitation prescribed is mandatory and therefore, the mandatory requirement of the limitation cannot be ignored. In order to answer the said question, the Division Bench has elaborately considered various decisions rendered by various Courts and thereafter, has come to the above conclusion.

20. Likewise, the Delhi High Court in the decision reported in 2016(340) ELT 119, Overseas Air Cargo Vs. CC and 2016 (337) ELT 41, Indair Carrier Pvt. Ltd vs Commissioner of Customs (General), has also taken the similar view.

21.In W.P.No.27948 of 2017, it is contended by the learned counsel for the Revenue that the Enquiry Report dated 23.05.2018 was made within 88 days from the date of show cause notice.

Therefore, it is contended that the time limit is adhered to. On the other hand, it is stated by the learned counsel for the petitioner that though the said report was made ready on 23.05.2018, admittedly, it was submitted before the Authority concerned only on 12.06.2018 and therefore, the very submission of the report itself is beyond the period of 90 days. I am in agreement with the submission made by the learned counsel for the petitioner in view of the fact that Regulation 20(5) contemplates not only preparing a report of the enquiry and also submitting the same within a period of 90 days from the date of issuance of the show cause notice. Therefore, it cannot be said that preparation was made in time and thus, it satisfies Regulation 20(5).

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

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

24. Further, a learned single Judge decision of the Calcutta High Court reported in 2018(362) ELT 947, OTA Falloons Forwarders Pvt. Ltd. vs Union of India, is relied on, wherein

the learned Judge has observed that the time limit prescribed in the Regulations are not mandatory, since the consequence of non adherence to the time limit has not been provided in the regulations.

25. A Division Bench decision of this Court made in W.P.(MD) No.11986 of 2018, etc., dated 19.07.2018, (wherein I am one of the party to the Bench) is also heavily relied on by the respondents in support of their contention that the time limit prescribed is only directory by applying the consequence of non compliance test.

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

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

28. Needless to state that the show cause notices are issued after suspending the license and therefore, the time limit prescribed at each stage needs to be complied with mandatorily, if not the consequence that would follow is the continuation of the suspension of his license thereby affecting/paralyzing the business activities of the licensee. These consequences, though not mentioned in the Regulations, are however evident apparently

on the face of the facts and circumstances. Therefore, it cannot be said that there is no consequence for non adherence to the time limit and therefore, such time limit is only directory and not mandatory.

29. In the abovesaid decision of the Division Bench in W.P.(MD) No.11986 of 2018, etc., the point came up for consideration is with regard to the time prescribed under Section 14 of the SARFAESI Act for the District Collector to pass orders and to decide as to whether it is mandatory or directory.

30. It is to be noted that the scope and purpose of Section 14 of the SARFAESI Act and the subject matter regulations are different and distinguishable. Under the SARFAESI Act, the petitioner approaches the District Collector under Section 14 to take possession of the hypothecated land. Under Section 14 of SARFAESI Act, time limit is prescribed for the District Collector to pass such order. It is to be noted at this juncture that if an order is not passed within the time prescribed under Section 14 of the SARFAESI Act or if an order is passed beyond the period of stipulated therein, no consequence would follow in view of the fact that the Bank is at liberty to file any number of applications under Section 14 and that the borrower is also not affected in any manner if an order is not passed within the time limit. Further in the said order, the Division Bench has observed at paragraph Nos.17 (d) and (e) as follows:

> "17. From the foregoing discussion and on examining the relevant provisions and authorities cited by various counsel, the following illustrative principles may be gleaned and applied in order to determine if a provision is mandatory or directory:
>
> ...(d) The stipulation of consequences in the event of non-compliance of a provision is a relevant factor to be borne in mind while deciding whether the said provision is directory or mandatory and the non-stipulation thereof is indicative, albeit not conclusive, that the provision is directory.
>
> (e) Another dimension of the "consequences of non-compliance" test is that provisions that are intended to protect or further substantive rights of a party, including time limits in that regard, are generally construed as mandatory whereas provisions that do not impact the substantive rights of a party are generally construed as directory and not mandatory."
>
> (emphasis supplied)

31. In this case, non compliance of the time limit would certainly affect the interest of the customs house broker and therefore, the above said decisions relied on by the respondents are not applicable to the present facts and circumstances. In other words, it is obvious that by not adhering to the time limit, the substantial right of the licensee to continue the business is affected and therefore, it is evident that only to protect such substantial right, the time limit is prescribed under the regulations and thus, the compliance of the same is mandatory and not directory.

32.It is also contended by the learned counsels for the respondents that these regulations are made by exercising the power conferred under Section 146 of the Customs Act and therefore, when the said provision under the Customs Act does not prescribe any time limit, non compliance of the time limit prescribed under the present regulations cannot be fatal, since these regulations cannot go beyond the parent Act. I am not in agreement with the above submissions. First of all, it is to be noted that Section 146 of the Customs Act deals with the power to issue license. For issuing a license, obviously, there is no necessity for fixing any time limit. However, after issuing a license, if any action is sought to be taken based on an allegation of violation of terms of such license, certainly such action as contemplated under the relevant regulations is to be commenced and concluded within the time limit fixed therein at each stage. Therefore the regulations were rightly framed by fixing the time limit, since not following the time limit would result in serious consequences against the licencees as discussed supra.

33. It is also contended that the regulations are only procedural laws and therefore, not complying with the time limit fixed therein cannot be fatal. Again, I am not in agreement with the above proposition. These regulations cannot be termed as simple procedural laws. On the other hand, these regulations are governing the licensees and actions to be taken against those persons, who violate the terms of the license. Therefore, when a serious consequence is apparent if the time limit is not adhered to, it cannot be said that these regulations are only procedural in nature and consequently, time limit prescribed therein are directory.

34. Considering all the above stated facts and circumstances and by following the decisions made by this Court earlier on the very same issue as discussed supra, this Court is inclined to allow all these writ petitions and set aside the impugned proceedings.

35. However, before parting with this case, this Court would like to make certain observations by way of suggestions to the Revenue as follows:

It is true that this Court has not gone into the merits of the allegations made against these licencees viz., alleged violations of conditions of license or regulations. It is also true that this Court has chosen to grant the relief to these petitioners only by considering the issue of limitation, as discussed supra, which is found to be mandatory. At the same time, this Court is of the view that atleast in future, the erring persons on both sides should not be allowed to go unpunished or unquestioned by taking shelter under the time limit prescribed as such in the relevant regulations. Therefore, it is advisable to make suitable amendments or introduction of necessary provisions under the relevant regulations as suggested hereunder:

a) If an order of suspension is passed suspending the license of the customs broker, either as an imminent action or pending enquiry, all further proceedings are to be completed and a final order is to be passed preferably within a time frame.

b) If no such final order is passed within such time as indicated supra, the suspension of the license is to be treated as deemed to have been lapsed and the license is deemed to have been restored, however without prejudice to the rights of the concerned authorities to pass such final order thereafter within a further time limit.

c) If no final order is passed even after the extended time limit as indicated supra, the officials concerned at every stage must give an explanation/ report to the higher officials as to why the time limit was not adhered to at every stage.

d) Based on the explanation/report submitted by the concerned officials, suitable action/corrective measure should be taken against the erring officials for not adhering to the time limit, after giving them an opportunity of hearing.

e) However before taking such action, it is to be seen as to whether such inaction within the time frame was due to some bonafide reason

beyond the control of such authority or at the fault or deliberate non -cooperation of the licensee.

37. This Court is constrained to make the above observations by way of suggestions to the Revenue only to safeguard the interest of both parties in future cases.

38. With the above observations, all these writ petitions are allowed and the impugned proceedings are set aside. No costs. The connected miscellaneous petitions are closed.

Registry is directed to mark a copy of this order to the Central Board of Excise and Customs, New Delhi.

s/d-
Assistant Registrar(CS III)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House,
60 Rajaji Salai, Chennai 600 001.

2. The Inquiry Officer/Deputy Commissioner of Customs,
Air Cargo Complex, Air Commissionerate,
New Custom House,
Meenambakkam, Chennai 600 027.

3. The Additional Commissioner of Customs/Assistant Commissioner of Customs,
Chennai IV, Commissionerate, Custom House
No. 60, Rajaji Salai, Chennai 600 001.

4. The Central Board of Excise and Customs
New Delhi.

+1 CC to Mr.A.P. Srinivas, Advocate sr 100203.
+1 CC to Mr.N. Senthil Kumar, Advocate sr 99814
+1 CC to Mr.A. Mohamed Ismail, Advocate sr 99625
+4 CCS to Mr.V. Sundareswaran, Advocate sr 99540.
+3 Ccs to Mr.K.S. Ramasamy, Advocate sr 99477
+3 Ccs to Mr.Hari Radhakrishnan, Advocate sr 99275 to 99277
+3 Ccs to Mr.S.Baskaran, Advocate sr 99220 to 99222

+1 CC to M/s.R. Hemalatha, Advocate sr 99173.
+1 CC to Mr.S.Murugappan, Advocate sr 99181
+1 CC to Mr.P. Giridharan, Advocate sr 99492.

W.P.NOS.3366, 1855, 18041, 18060,
6755, 18755, 22154 of 2019,
31383 of 2018, 27948,28726,
28850, 28858 of 2019
(12 W.Ps.)

CP(CO)
SP(06/12/2019)