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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: **23.05.2022**Judgment pronounced on: **28.07.2022**+ **CUSAA 8/2020 & CM APPLs.34414/2020 & 13447/2021**

M/S LEO CARGO SERVICES THROUGH ITS DIRECTOR

SH. SANJEEV MAGGU Appellant

Through : Mr Akhil Krishan Maggu and
Mr Ashish Batra, Advs.

versus

COMMISSIONER OF CUSTOMS, AIRPORT AND GENERAL,

NEW CUSTOM HOUSE, NEW DELHI Respondent

Through : Mr Harpreet Singh, Sr Standing
Counsel with Ms Suhani Mathur
and Mr Jatin Kumar Gaur, Advs.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Court Hearing/ Hybrid Hearing (as per request)]****JUDGMENT****TARA VITASTA GANJU, J.:****CM APPL. 13447/2021 [for placing additional document on record] & CM
APPL. 34414/2020 [for placing on record judgment in the context of the
appeal filed on 21.12.2020]**

1. No objection to this application has been made by the Respondent and in any event these are relevant citations in the matter. Hence, these



applications are allowed.

CUSAA 8/2020

2. The present appeal has been filed against the order dated 01.10.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'CESTAT').
3. By an order dated 29.03.2022, this Court framed the following questions of law: -

“(i) Whether the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) misdirected itself in law by holding that the timeline prescribed under Regulation 20(5) of the Customs Brokers Licensing Regulations, 2013 is directory?”

“(ii) Whether the revocation of the Appellant's Licence was vitiated on account of the failure to afford him the opportunity to cross-examine the persons, based on whose statements, his licence was revoked?”

4. We were informed by the counsel for the Appellant on 23.05.2022 that the Appellant does not wish to press the second question of law framed above. Therefore, this judgment is confined to only the following question: -

“(i) Whether the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) misdirected itself in law by holding that the timeline prescribed under regulation 20(5) of the Customs Brokers Licensing Regulations, 2013 is directory?”

5. The brief facts relevant for the purpose of this judgment are as follows:-
 - 5.1 Information was received by the Office of Commissioner of Customs (Airport and General)/Respondent herein from Additional Director,



DRI, HQ, New Delhi which stated that one Sh. Sanjeev Maggu, Director of the Appellant Company/Appellant herein, along with one other person (Sh. Ramesh Wadhera) were engaged in evasion of Customs Duty by way of diverting the goods stored in Custom Bonded warehouses, into domestic market, without payment of customs duty and, further, that documents to show re-export of warehoused goods were also being forged/fabricated by the said persons. It was averred that for the purpose of evasion, allegedly fictitious firms were created by the Appellant and one Shri Ramesh Wadhera, and Import Export Codes (IEC's) were obtained in the name of:-

- (i) M/s Accturists (OPC) Pvt. Ltd (IEC: 0517503581);
- (ii) M/s Sparx Exports (IEC: 0516517803);
- (iii) M/s Shree Shyam Enterprises (IEC: 0516966839); and
- (iv) M/s Horrens Exim (IEC: 0516516299).

5.2 The information further added that the Appellant and Shri Ramesh Wadhera had also obtained bonded warehouse(s) in the names of their employees with fictitious residential addresses, which were used for diversion of warehoused goods into the domestic market without payment of customs duty. It was further averred that the aforesaid persons were utilizing the services of other customs brokers for the clandestine removal of goods. It was also alleged that the Appellant was the mastermind and Sh. Ramesh Wadhera was the financier behind the aforesaid illegal activities.



- 5.3 Based on the above information, various simultaneous searches were conducted at the residential premises of the Appellant and at the office premises of the aforementioned entities, wherein various documents were seized by the officers of the DRI. The statements of all concerned persons, including statements of the public bonded warehouse keepers, various employees of other Customs Brokers and the alleged fictitious firms, and also statements of Inspector IGI Airport, Inspector Bond Section, TA Bond Section and other officials were recorded by Customs officers under the provisions of Section 108 of the Customs Act, 1962 (Customs Act).
- 5.4 Pursuant to the said investigations, a show-cause notice dated 10.08.2018 was issued to the Appellant, asking him to show-cause as to why they should not be held responsible for contravention of Regulations 10(d), (g) and (q) of the Custom Broker Licensing Regulations, 2018 (CBLR 2018) read with erstwhile CBLR 2013 and be made liable for action under Regulation 14 read with Regulation 17 and 18 of the said Regulations for revocation of their Custom Broker Licence, forfeiture of part or whole security and penalty.
- 5.5 The show-cause notice dated 10.08.2018 (SCN) further stated that Ms. Anamika Singh, Deputy Commissioner, ACC Import was appointed as the Inquiry Officer and asked the Appellant to reply within 30 days from the issuance of the show-cause notice.
- 5.6 The Appellant sent a written statement of defence dated 05.10.2018 to the Inquiry Officer. In the written statement, it is stated by the Appellant



that though the charge against him is that he diverted goods from a customs bonded warehouse, he is neither an importer and/or owner of the goods, nor the CHA, and the entire allegation against him is based on uncorroborated statements of witnesses and certain persons. The Inquiry Officer granted a personal hearing to the Appellant herein and the same was attended on 30.11.2018. Thereafter, the Inquiry Officer submitted its Inquiry Report dated 06.12.2018, which was received by the Appellant on 14.12.2018.

- 5.7 The Inquiry Officer in her Inquiry Report while discussing personal hearing, mentioned the reason for the delay in issuing the Inquiry report beyond the prescribed period of 90 days from the issuance of show cause notice at Annexure-F as under:

“....13. Record of Personal Hearing and Submissions of the CB:

In terms of Regulation 17(1) of CBLR, 2018 (read with erstwhile CBLR, 2013), the undersigned was appointed as Inquiry Officer in the case. However the SCN could not reach to the enquiry officer and the undersigned could only come to know about it when she received the reminder dated 13.11.2018. The undersigned immediately informed about the same vide letter dated 19.11.2018 to the policy wing (Annexure VIII) and on the same date a letter was issued to the CB to appear before Enquiry Officer.....”

- 5.8 After submission of the Inquiry report, Commissioner Customs (Respondent herein) granted a personal hearing to the Appellant on 16.01.2019, which was unattended and thereafter another hearing was granted on 28.01.2019, which was attended by the counsel for the



Appellant. During this personal hearing, it was submitted by the Appellants that the Inquiry Officer submitted the Inquiry Report after the expiry of 90 days from the date of issuance of the show-cause notice and therefore it is beyond the period of limitation as prescribed under the CBLR Regulations.

- 5.9 Thereafter, the Commissioner Customs passed the Order-in-Original dated 04.02.2019 *inter-alia* directing as follows:-

“In view of the above, I conclude that all the allegations of contravention of Regulation 10(d), 10(g) & 10(q) of CBLR, 2018 (erstwhile 11(d), 11(g) and 11(o) of CBLR, 2013, as amended) against the noticee are proved & confirmed in the present case and accordingly, I pass the following order:-

ORDER

In exercise of powers conferred in terms of Regulation 14 & 18 read with Regulation 17(7) of CBLR, 2018 (erstwhile Regulation 18 & 22 read with Regulation 20(7) of CBLR, 2013), I hereby revoke the CB Licence No. R-24/03 (PAN: AAACL9453B) of M/s Leo Cargo Services Pvt. Ltd. I also order for forfeiture of the whole amount of security deposit of Rs. 75,000/- (Rupees Seventy Five Thousand only) furnished by them. I also impose penalty of Rs. 50,000/- on M/s Leo Cargo Services Pvt. Ltd.”

No finding on the issue of limitation as raised by the Appellant was set forth in the order.

- 5.10 The Appellant preferred an appeal against the Order-in-Original before the CESTAT, New Delhi. The CESTAT passed an order dated 01.10.2019 in which it is stated that the Appellant contended the



following as his defence:-

“3. It is submitted that the grounds of defence of the appellant have not been considered by the adjudicating authorities below. It is impressed upon that the findings about violation of Regulations of CBLR 2018/2013 on the part of the Appellant are liable to be set aside on the ground of limitation alone as the enquiry report was submitted after expiry of 90 days of the issuance of show cause notice and the same was not submitted as per the provisions carried out under Regulations 20(5) of CBLR, 2013. However, the said ground has not been considered by the Commissioner. Thus, the Order is liable to be set aside on this score only.

With respect to merits, it is submitted that there is no evidence on record except mere statements of various people without any corroboration thereto. Those statement makers were never allowed to be cross-examined by the respondent. Hence, on merits also, the Order under challenge is liable to be set aside.....”

5.11 As per the CESTAT order dated 01.10.2019, the Revenue during the hearing has contended as follows:-

“4. Per contra, it is submitted on behalf of the Department that after receiving the information from Additional Directorate, DRI Headquarters, vide letter dated 10.05.2018, that a meticulous investigation in the form of conducting searches at various premises, in the form of recording of the statements of various people who were found the IEC Holders of the fictitious Companies as allegedly created by Shri Ramesh Wadhera and Shri Sanjeev Maggu, the Director of the Appellant Company was called. It is impressed upon that the Director of the Appellant was the master mind of diverting the warehoused goods to the domestic market. The statements being given to the Customs officers under Section 108 of the



Customs Act are well admissible into evidence. Thus, there is sufficient evidence on record as a proof for the alleged illegal act on the part of the Appellant. Hence, there is no infirmity in the Order under challenge.

It is impressed upon that the impugned show cause notice cannot even be held to be barred by time as alleged. It is impressed upon that the time limit under Regulation 20(5) of CBLR, 2013 is mere directory and not mandatory in nature. Learned AR has relied upon decision of Hon'ble Apex Court in the case of Commissioner of Customs Vs. Candid Enterprises reported in 2001 (130) E.L.T. 404 (S.C.) to emphasise that even if there is delay on the part of the public authorities the same is condonable when the element of fraud is involved....”

[Emphasis is ours]

5.12 Vide order dated 01.10.2019, the CESTAT, while discussing both the concerns of limitation and the merits of the Appellant's challenge, reached the conclusion that the time limit as prescribed under Regulation 20 of CBL, 2013 need not be so strictly adhered and further held that the time limit needs to be considered in view of the principles of fairness and equity. The CESTAT in its said order has concluded as follows:-

“12. In the light of the entire above discussion, when facts of this case are looked into, we observe that after the show cause notice was served upon the appellant he tried to delay investigation by not joining the investigation. It is also observed that vide his letter dated 30.10.2017, Shri Sanjeev Maggu had stated that no firm in the name of M/s. Leo Cargo Services ever existed at the address on which the hearing notices were served. Thus, the malafide intentions to not to



enable the DRI officials to unearth the modus operandi of committing the alleged illegal act were very much apparent on the record. These reasons are sufficient to hold that the Inquiry officer could not maintain the time line of 90 days for submitting the report. Accordingly, we are of opinion that the customs house agent cannot be permitted to take benefit of his own wrong, on the ground that the process is not completed within the stipulated period. In such circumstances, if the provision is construed in such a rigid form and no flexibility is allowed, though it results into declaration of the entire action of the revenue as illegal, it would not ensure justice rather shall defeat it? Thus, we answer the question framed, as above, as follows:

In view of the above noticed intention of CB to not to enable the Department to adhere to the impugned time limit despite that the illegal act of diverting the warehoused goods to domestic market was alleged against the said CB, the time line of Regulation 20(5) CBLR, 2013 is mere directory in nature and the non-compliance thereof shall not vitiate the action taken against the defaulting CB.”

[Emphasis is ours]

- 5.13 On the merits of the matter, the CESTAT upheld the cancellation of the Appellant's licence with the forfeiture of security deposit and imposition of a penalty. The CESTAT, accordingly, by its order dated 01.10.2019 dismissed the appeal filed by the Appellant and upheld the Order-in-Original, which has led to the filing of this appeal.
6. The Appellant has challenged the impugned order of CESTAT dated 01.10.2019 *inter-alia* on the following grounds:-
- (i) The impugned order has been passed by the Tribunal in



contravention of the principles of natural justice. No opportunity under Regulation 17(4) was granted to the Appellant for cross-examination of the persons on whose statements the licence of the appellant was revoked.

(ii) That the action taken by the Respondent was time barred as the Inquiry Report issued by the Investigating Officer was beyond the mandatory period of 90 days as stipulated under Regulation 17(5) of the CBLR 2018.

- 6.1 As noticed in paragraph 4 above, since the Appellant does not wish to press the issue of denial of right to cross-examination, we do not propose to deal with this issue in the judgment.
7. The Respondent filed his reply through an affidavit of the Assistant Commissioner of Customs dated 08.02.2021. The said reply *inter-alia* states that both the orders, i.e., the Order-in-Original passed by the Commissioner of Customs, dated 04.02.2019 as well as the CESTAT order dated 01.10.2019 are legal, well-reasoned orders and are passed following the principles of natural justice.
- 7.1 The reply affidavit filed by the Respondent additionally asserts that, pursuant to paragraph 7.1 of CBIC Circular No. 09/2010, dated April 8, 2010, the timeframe for proceedings under CHALR (now CBLR) shall be completed within nine months of the date of receipt of an offence report. The offence report, in the form of DRI's Investigation report dated 10.05.2018, was received in the Respondent's office on



18.05.2018. Proceedings under the Custom Broker Licence Regulations, 2018 (erstwhile CBLR 2013) in the said case by the issued SCN No. 23/MK/Policy/2018 dated 10.08.2018; Inquiry report submitted on 06.12.2018 and considering all the facts, final order has been passed by the Competent Authority vide Order-in-Original No. 05/MK/Policy/2019 dated 04.02.2019. Therefore, the proceedings in the said case under the CBLR have been completed well within the “over all” time limit prescribed as per the above-mentioned CBIC Circular dated 08.04.2010.

- 7.2 It is further explained in the reply affidavit that the denial of the right to cross-examination is valid in law as the Petitioners were not able to produce on record any document that denied the charges. Since the Appellant does not wish to press the second question of law i.e.

“(ii) Whether the revocation of the Appellant’s Licence was vitiated on account of the failure to afford him the opportunity to cross-examine the persons, based on whose statements, his licence was revoked?”

We do not propose to deal with the issue of denial of the right of cross-examination in the judgment.

- 7.3 It was further stated in the reply that the Adjudicating Authority had revoked the Appellant’s Customs Brokers Licence by Order-in-Original dated 04.02.2019 after finding that the Appellant had grossly violated the provisions under Regulations 10 (d) (g) and 10 (q) of the Customs Brokers Licensing Regulations, 2018 (CBLR 2018) and the same has



been affirmed by the CESTAT in the impugned order.

8. By Order dated 29.03.2022, this Court had directed the parties to file their brief written submissions. Written submissions were filed on behalf of the Appellant only on 10.05.2022.
9. The Appellant has in his written submissions *inter-alia* submitted that the time limit(s) prescribed under the Custom Broker Licensing Regulations, 2013 (CBLR, 2013) is mandatory and not directory. This Court, in a plethora of judgments, has also repeatedly held the same. However, the Tribunal has taken a contrary view to the binding precedents.
- 9.1 The Appellant has further averred that each of the various time limits prescribed under the CBLR is mandatory in nature. As per Regulation 17(5) of CBLR, 2018, the Inquiry Officer has to submit its Inquiry report within 90 days of the issuance of the show-cause notice. The Appellant avers that the show-cause notice was issued on 10.08.2018 and the period of 90 days prescribed under Regulation 17(5) expired on 08.11.2018. The enquiry report submitted on 06.12.2018 was beyond the prescribed period.
- 9.2 The Appellant *inter-alia* seeks to rely on the following judgments passed by Coordinate Bench(s) of this Court, which have directly dealt with the subject issue involved in the present appeal:
 - (i) Overseas Air Cargo Services versus Commr. Of Cus. (General), New Delhi reported as 2016 (340) E.L.T. 119 (Del.);
 - (ii) Impexnet Logistic Versus Commissioner of Customs



(General) reported as 2016 (338) E.L.T. 347 (Del.);

(iii) Indair Carrier Pvt. Ltd. Versus Commissioner of Customs

(General) reported as 2016 (337) E.L.T. 41 (Del.); and

(iv) Sunil Dutt versus Commissioner of Cus. (General), NCH reported as 2016 (337) E.L.T. 162 (Del.).

9.3 The Appellant has also placed on record the judgment of the Bombay High Court in a case titled *The Principal Commissioner Customs V. Unison Clearing Pvt. Ltd.* reported as 2018 SCC Online Bom 753. The view of the Bombay High Court is contrary to the aforesaid judgments as mentioned in para 9.2 above.

9.4 The Appellant in his Written Submissions also relies upon two orders of CESTAT :

(i) M/s RP Cargo, Handling Services vs. Commissioner of Customs; and

(ii) M/s D.S.Cargo Agency vs. Commissioner of Customs (interim); wherein, the Revenue itself has held that the time frame under the Customs Broker Licensing Regulations, 2013 is mandatory and non-compliance thereof would be fatal to the proceedings.

10. Despite being given an opportunity, the Respondent did not file any Written Submissions.

11. It is necessary to set forth the relevant statutes and regulations applicable to the present case. CBLR 2018 has been notified on 16.05.2018. The SCN in this matter was issued by the Respondent under Regulation 17 (1) of CBLR, 2018 read with CBLR 2013 on 10.08.2018,



based on information received by the office of the Commissioner of Customs on 10/18.05.2018. Regulation 17 of CBLR 2018 is *pari materia* to Regulation 20 of CBLR 2013.

- 11.1 The procedure for revoking a Custom Broker's Licence or for imposing a penalty is governed by Regulation 17 of CBLR 2018, the relevant extract is set forth below: -

“17. Procedure for revoking licence or imposing penalty. —

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

(2)

(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)

(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)

(7) *The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):*

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(8) ”

11.2 These guidelines are comprehensive and there are timelines set forth for each step that the Customs Broker and Revenue authority take during such proceedings. In terms of Regulation 17 (1), a show cause notice is to be issued within 90 days from the date of receipt of the offence report. Regulation 17 (5) prescribes a time limit of 90 days from the



date of issue of show cause notice for submission of an Inquiry Report. Sub-regulation (7) of Regulation 17 once again prescribes that within 90 days from the date of the submission of the Inquiry Report and after consideration thereof, the Principal Commissioner/Commissioner shall pass orders either revoking the suspension of licence or revoking the licence of the customs broker.

- 11.3 Although the said Regulation does not prescribe an overall time limit for an inquiry, Circular No. 09/2010-Customs dated 08.04.2010 issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India *inter-alia* prescribed time limits for procedures governing the suspension/revocation of CB licences. Para 7.1 of the said circular, *inter alia*, states that there shall be an overall limit of nine (9) months from the date of receipt of the offence report for the passing of the final order as follows:

“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.”

12. From a perusal of the record, the following facts are evident. An Offence Report dated 10.05.2018 was received in the office of the Commissioner of Customs on 18.05.2018, on the basis of which the show-cause notice dated 10.08.2018 was issued by the Respondent. Although, a copy of the Offence Report was not filed, the show cause notice states that the Offence Report dated 10.05.2018 was received in the office of Respondent on 18.05.2018; causing an eight days’ internal delay which is not attributable to the Appellant. Regulation 17(1) sets forth that the notice “shall” issue within “*ninety days from the date of receipt of offence report.*” If calculated from 10.05.2018, the SCN would have been delayed, however, since the show cause notice states that the document was received only on 18.05.2018, the SCN issued on 10.08.2018 is stated to have been issued within time.
- 12.1 Once an Offence Report is issued, the time period as provided in the CBLR commences. The scheme of these Regulations is such that even a delay in one or more sub-regulation(s) of Regulation 17 of CBLR, 2018 will have a cascading effect on the subsequent timelines, causing a consequential delay at each stage.
- 12.2 The Inquiry Report submission under sub-regulation (5) of Regulation 17 was to be done within 90 days of the date of issue of SCN i.e. within 90 days from 10.08.2018. However, the Inquiry Report was delayed and



only issued beyond the period of 90 days, on 06.12.2018. Hence, there was a delay of 28 days under Regulation 17(5). The proceedings that commenced from 18.05.2018, i.e., the date of receipt of the Offence Report, culminated in the passing of a final order dated 04.02.2019 of cancellation of the customs broker licence of the Appellant.

- 12.3 We would like to state here that the provisions of sub-Regulation (4) of Regulation 17 were given a complete go-by, by not allowing the customs broker any opportunity to cross examine the persons examined in support of the grounds forming the basis of these proceedings. The Inquiry Officer has declined the cross examination of the witnesses by the customs broker on an incorrect understanding of Regulation 17(4) of CBLR 2018. In view of the fact that the Appellant is not pressing this question of law, we do not propose to say anything further in this regard.
13. The issue of timelines under Regulation 17, CBLR 2018, which is *pari materia* to Regulation 20, CBLR 2013 are no longer *res integra*. This has been dealt with in a catena of judgments passed by this Court. In the matter titled *Overseas Air Cargo Services V. Commissioner of Customs* reported as *2016 SCC Online Del 4015*, the show cause notice was issued after the lapse of ninety days from the date of receipt of the offence report and the Inquiry Report was submitted more than three years after the show cause notice was issued. While citing a decision in *Indair Carrier Pvt. Ltd. V. Commissioner of Customs (General)*



reported as 2016 SCC Online Del 2893, this Court in *Overseas Air Cargo* (supra) held as follows: -

“16. In Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General) (supra) the Court emphasised the mandatory nature of the CHALR as regards the time limits as under:

“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 *Shankar Clearing & Forwarding v. C.C. (Import & General)*: 2012 (283) E.L.T. 349(Del.), the order dated 25 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, SeaPort/Imports, Chennai*: (2015) 322 E.L.T. 170 (Mad.) and *Commissioner v. Eltece Associates* 2016 (334) E.L.T. A50 (Mad.).”

[Emphasis is ours]

It was consequently held that the order revoking the licence of the Appellant to be unsustainable in law.

- 13.1 In *Impexnet Logistics v. Commissioner of Customs (General)* reported as 2016 SCC OnLine Del 6703, where the show cause notice was issued beyond the period of 90 days from the date of receipt of offence report in contravention of Regulations 20(1) CBLR 2013, a coordinate bench of this Court has held :

*“6. It is plain that in the case there has been a violation of the time limits set out in regulation 20 of the Customs Brokers Licensing Regulations, 2013 (corresponding to regulation 22 of the Customs House Agents Licensing Regulations, 2004). In the decision dated May 12, 2016 (*Indair Carrier P. Ltd. V.**



Commissioner of Customs, (2016) 40 GSTR 81 (Delhi) this court held (page 84):

.....

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 and Forwarding v. Commissioner of Customs, (2013) 23 GSTR 114 (Delhi); (2012) 283 ELT 349 (Delhi), the order dated April 25, 2016 passed by this court in Customs Appeal No. 14 of 2016 (Commissioner of Customs v. S.K. Logistics, (2016) 40 GSTR 72 (Delhi)) and the order dated April 29, 2016 in Writ Petition (C) No. 3071 of 2015 (Sunil Dutt v. Commissioner of customs, (2016) 40 GSTR 75 (Delhi)). 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 ELT 170 (Mad) and Commissioner of Customs v. Eltece Associates, (2016) 334 ELT A50 (Mad)."*

7. Recently by an order dated April 24, 2016 in Writ Petition (C) No. 1734 of 2016 (HLPL Global Logistics P. Ltd. v. Commissioner of Customs, (2016) 40 GSTR 86 (Delhi)) this court reiterated that the time limits in regulation 20 of the Customs Brokers Licensing Regulations 2013/regulation 22 of the Customs House Agents Licensing Regulations, 2004 are sacrosanct.

8. 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.”

[Emphasis is ours]

13.2 A similar issue came up for consideration before one of us (Rajiv Shakdher, J) sitting in the Division Bench of Madras High Court in a matter titled *Santon Shipping Services Vs. The Commissioner of Customs* reported as 2017 SCC OnLine Mad 7084. The Court held as follows :-

“37. That apart, atleast in two Judgments of this Court, where a similar issue came up for consideration, before one of us sitting singly (Rajiv Shakdher,J), a similar view was taken. The first Judgment is dated 15.12.2016, which was passed in W.P.No.37796 of 2016, in the matter of M/s. Sowparnika Shipping Services Vs. The Commissioner of Customs, Chennai and another wherein, the Judgments referred to hereunder were noticed and followed:

- i) A.M.Ahamed & Co. V. Commissioner of Customs (Imports), Chennai- 2014 (309) E.L.T. 433 (Mad)*
- ii) Masterstroke Freight Forwarders P. Ltd., V. Commissioner of Customs (I), Chennai - 2016 (332) ELT 300 (Mad.)*
- (iii) Sunil Dutt V. Commissioner of Customs (General), NCH - 2016 (337) ELT 162 (Del.)*
- iv) Impexnet Logistics V. Commissioner of Customs (General) - 2016 (338) ELT 347 (Del.)*
- v) Overseas Air Cargo Services V. Commissioner of Customs (General), New Dekgu- 2016 (340) ELT*



119 (Del.)

38. Ultimately, the Court held that the show cause notice issued beyond the limitation period was not sustainable.

39. Following the said Judgment in *M/s. Sowparnika Shipping Services Vs. Commissioner of Customs, Chennai and another*, one of us (Rajiv Shakdher, J) allowed yet another writ petition i.e., W.P.No.44344 of 2016, in the matter of *M/s. Patriot Freight Logistics System Vs. Commissioner of Customs, Commissionerate - VIII, Chennai and two others* vide Judgment dated 03.02.2017.

40. Also, another learned Judge of this Court (R.Mahadeven, J) in 2016 332 E.L.T. 300 (Mad.) in the matter of *Masterstroke Freight Forwarders P. Ltd. Vs. CC (1), Chennai-1* after having considered a number of Judgments, has ultimately, concluded as follows:

“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. 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."

41. In view of the aforesaid Judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.

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.

43. It is not the case of the 1st respondent that the 90 days limitation contemplated under Regulation 22(1), is directory. It is also not the case of the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.

44. Since the offence report was dated 22.9.2010 and the show cause notice, admittedly, was issued only on 18.11.2011, there can be no doubt that the said show cause



notice was issued well beyond the period of limitation of 90 days.

45. Whatever be the claim and counter claim on the merits, in this appeal can, in our view, they get shadowed by the failure on the part of the revenue in not acting in time, by issuing the show cause notice, within the period as contemplated under Regulation 22(1) of CHALR, 2004.

46. Therefore, we are of the considered view, and in fact have no hesitation to hold so that, the Revenue has not issued the show cause notice dated 18.11.2011 within the period of limitation prescribed under Regulation 22(1) CHALR, 2004 and thus, the consequent proceedings involving revocations of the appellant's CHA license and forfeiture of its security deposit, is unlawful..."

[Emphasis is ours]

13.3 A Coordinate Bench of this Court in *Sh. Harjeet Singh Johar V. The Commissioner of Custom* reported in 2018 SCC Online Del 6650, while following the earlier decisions passed by this Court has held that the time limits have to be understood as strict time schedules and construed accordingly. It held that:-

"5. The Delhi High Court in *Overseas Air Cargo Service v. Commissioner of Customs*, 2016 (340) ELT 119 (Del.), *Indair Carrier Pvt. Ltd. v. Commissioner of the Customs (General)* 2016 (337) ELT 41 (Del.) and *Commissioner of Customs v. S.K. Logistics* 2016 (337) ELT 39 (Del.), has held that the time period of 90 days mentioned in Regulation 20(1) of the 2013 Regulations is mandatory and sacrosanct. A show cause notice issued after 90 days of receipt of the offence report, is



invalid. In other words, if the show cause notice was not issued within a period of 90 days from the date of receipt of the offence report, the proceedings under Regulation 20 would be null and void. We are bound by these decisions passed by co-ordinate Division Benches of this Court.

.....

10. Decision in *A. M. Ahamed (supra)*, relates to Regulation 20 of the Customs House Agent License Regulations 2004 ('2004 Regulations', for short) which were applicable prior to enactment and enforcement of 2013 Regulations...

"20. The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 08.05.2010 with a copy marked to the first Respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days."

17. In view of the aforesaid position, we record that the suspension order dated 31.03.2017 was based upon the



offence report, and therefore the show cause notice under Regulation 20, dated 14.07.2017, would be clearly barred by the limitation as it was issued more than 90 days after the offence report was submitted.”

[Emphasis is ours]

- 13.4 It has been similarly held by this Court that orders of the CESTAT are unsustainable in law if the time limit stipulated in the CBLR Regulations has not been complied with. Reliance is placed upon *Sunil Dutt V. Commissioner of Customs(General)* reported as 2016 SCC Online Del. 6687 and *Commissioner of Customs (SeaPort/ Import), Chennai V. Sancos Trans Ltd* reported as 2016 (334) E.L.T. 274 (Mad.).
- 13.5 As stated in para 9.3 above, the Appellant has also placed on record the judgment of the Bombay High Court in *Principal Commissioner of Customs V. Unison Clearing Pvt. Ltd.* reported in 2018 SCC OnLine Bom 753, wherein while deciding a batch of petitions held that the time limit contained in Regulation 20 of CBLR 2013 is directory and cannot be held to be mandatory. The Court further observed that in a case where strict adherence to the timeline cannot be ensured, the principles of fairness would require that delay must be justified by giving reasons as to why the time limit was not adhered to.
14. It can be seen that the timelines as prescribed under various Regulations in CBLR 2018, have been consistently held by the Courts as mandatory in nature. Each timeline is sacrosanct, and the idea of prescribing a time limit by statute becomes redundant if not adhered to. Therefore, it is not



just the overall timeline of 270 days (as set forth in the Circular No. 09/2010 dated 08.04.2010) that needs to be followed, but also each and every timeline as prescribed in the CBLR 2018.

- 14.1 Timelines cannot be overlooked by Revenue by citing reasons on merits. We are bound by the decisions, as discussed above, passed by the coordinate benches of this Court and other High Courts, which state that each timeline is sacrosanct.
- 14.2 We are unable to persuade ourselves to agree with the decision of the Bombay High Court in the *Principal Commissioner of Customs V. Unison Clearing Pvt. Ltd* (supra) that where a reasonable explanation is given for such delay and were accounted for, the delay may be condoned. In any event, in the present case, the facts are distinguishable. The Revenue has nowhere in their pleadings before the CESTAT and neither in their Reply affidavit filed in this present appeal given any reasonable explanation for the delay or non-compliance of the timeline prescribed under sub-regulation (5) of Regulation 17 of CBLR 2018. Revenue is bound to follow the settled law and statutory provisions, including their timelines. Once the limitation is prescribed clearly therein, it cannot be stated that because of other issues, this mandatory requirement can be ignored.
- 14.3 In view of the foregoing discussion and having regard to the consistent view of the Courts across the Board, we are not inclined to take a contrary view. The surviving question of law as framed as set forth in paragraph 3(i) herein is answered in favour of the Appellant and against



the Respondent.

15. Accordingly, we allow the appeal and set aside the impugned order dated 01.10.2019 passed by the CESTAT. Consequently, the proceedings involving revocation of the appellant's custom broker license, forfeiture of its security deposit and imposition of penalty, will also stand set aside.
- 15.1 The Appellant's customs broker licence is stated to have expired in the meantime and has not been renewed. Resultantly, the Respondent will be required to process the Appellant's application for renewal of their licence in accordance with the law.
- 15.2 In light of the above discussion, there shall be no order as to costs.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JULY 28, 2022