

**Knowledge Repository of Case-Laws with respect to Customs Broker
Licensing Regulations, 2018 (Earlier CBLR, 2013; CHALR, 2004; CHALR, 1984;
CHALR, 1965)**

1. PRINCIPAL COMM. OF CUS. (GENERAL), MUMBAI

Versus

UNISON CLEARING P. LTD.

2018 (361) E.L.T. 321 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Summary:

Customs Brokers Licence - **Revocation of - Time-limit for issuing show cause notice - Whether mandatory or directory** - Strict adherence to the said time limit and not making it even slightly flexible not feasible - Time lines stipulated in Regulations are directory in nature, and not mandatory - **If time lines were considered mandatory and matter is closed on this basis, purpose of Regulations and intent of Legislature would get defeated**, rendering entire proceedings invalid - Also, there being no consequence stipulated for non-adherence to time periods for conducting inquiry, they cannot be fatal to outcome of inquiry - However, **when such time-limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons** - Delay in taking immediate action of suspension or initiation of inquiry within a period of 90 days not vitiates the action of Commissioner - Consequently, CESTAT not justified in setting aside order or suspension of Customs Brokers Licence on the ground of delay between suspension and the notice of deviation or omission - Regulations 19 and 20 of Customs House Licensing Regulations, 2013.

Words and Phrases - 'Shall' - Meaning of - 'Shall' to be construed by taking into consideration the nature, design and consequences, which would flow from construing it one or the other way - **Question whether statute is mandatory or directory, would depend on the intention of Legislature and not necessarily merely by looking at the language in which it is clothed.**

Note:

The subject case was **dissented** by the High Court of Judicature at Madras in **KTR Logistics Solutions Pvt. Ltd. Versus Commissioner of Customs, Chennai [2020 E. L. T. 685 (Madras)]**

2. COMMISSIONER OF CUSTOMS

Versus

K.M. GANATRA & CO.

2016 (332) E.L.T. 15 (S.C.)

IN THE SUPREME COURT OF INDIA

Summary:

Customs House Agent's licence - **Revocation of - Repeated violations by CHA causing immense financial loss to revenue - Subletting of licence being serious violation and misconduct reflecting chain of acts - HELD** : Such misconduct has to be seriously viewed, and does not warrant taking of lenient view - Hence, exercise of discretion by CESTAT to restore licence after expiry of three years from date of its suspension, found to be bad - Regulations 13 and 23 of erstwhile Customs House Agents Licensing Regulations, 1984 - Regulation 22 of Customs House Agents Licensing Regulations, 2004.

Appeal to Appellate Tribunal - Orders - Jurisdiction vested in CESTAT has to be in accordance with law, keeping in view factual matrix of case - CESTAT having power to modify impugned order, restricting period of revocation of CHA licence was within sweep of said power - Section 129B of Customs Act, 1962.

Appeal to Supreme Court - Dismissal of - On merits, with question of law kept open to be agitated in appropriate case - Subsequent appeal raising that question of law cannot be dismissed on the ground that earlier case involved similar facts.

Case Citation:

Supreme Court approved the observations made by Division Bench of the CESTAT, West Zonal Bench, Mumbai in *Noble Agency v. Commissioner of Customs, Mumbai* [2002 (142) E.L.T. 84 (Tri. - Mumbai)] wherein it observed :-

“The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. **A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations**”

3. KTR LOGISTICS SOLUTIONS PVT. LTD.

Versus

COMMISSIONER OF CUS., CHENNAI

2020 (371) E.L.T. 685 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Brokers' License - Revocation/Suspension of - Time-limit for completion of proceedings - Overall time-limit of 9 months 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 Commissioner of Customs - Non-compliance of the time-limit would certainly affect the substantial right of the licensee to continue the business - Time-limit prescribed under the regulations only to protect such substantial right and thus, compliance of the same is mandatory and not directory.

Strictures against Revenue - At least 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 - (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 to be completed and a final order to be passed preferably within a time frame;** (b) **If no such final order is passed within such time, suspension of the license is to be treated as deemed to have been lapsed and the license is deemed to have been restored;** (c) **If no final order is passed even after the extended time-limit, 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 bona fide reason beyond the control of such authority or at the fault or deliberate non-cooperation of the licensee.

4. COMMR. OF CUS. (GENERAL), MUMBAI

Versus

SRINIVAS CLEARING & SHIPPING (I) PVT. LTD.

2022 (380) E.L.T. 60 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Summary:

Customs Broker Licence - Revocation of - Time limit - Whether mandatory or directory - Tribunal only dealt with delay in commencement of proceedings but nowhere dealt with submissions on explanation for delay in conclusion of proceedings furnished by Revenue - Timelines contained in Regulations cannot be construed to be mandatory but are directory - Tribunal nowhere discussed relevant facts like alleged smuggling of red sanders, various statements recorded under Section 108 of Customs Act, 1962 or modus operandi or Respondent's involvement, investigations on various firms alleged to be used for alleged smuggling activities, fact of detention of main accused under COFEPOSA Act, 1974 investigation with respect to DEPB Scheme, involvement of various Customs firms/companies and statement of various persons recorded under Section 108 ibid regarding destruction of post-shipment documents, factum of unrecorded exports, alleged forgery and fabrication of documents, admission of main accused that he was involved in smuggling of red sanders - **Absence of link given as reason for delay in completion of proceedings without any detailed discussion by Tribunal** - Prima facie it appears that main accused controls 99.9% of shareholding of Respondent which fact also needs to be considered while determining his link with Respondent - Restoration of licence of Respondent completely misplaced and complete non-application of mind - Matter remanded to CESTAT for fresh adjudication - Regulations 19 and 20 of Customs House Licensing Regulations, 2013.

5. SHABEER AHMED SAYEED

Versus

PR. COMMR. OF CUS. (PREVENTIVE), TIRUCHIRAPALLI

2020 (373) E.L.T. 380 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Broker - Upgradation from "H" card holder to "G" card holder - Both written and oral examinations conducted for 100 marks each - Out of 21 candidates who passed written examination only two declared as having passed oral examination - Conduct any oral examination not provided in relevant Rules, which stipulated that written examination alone must be conducted - Element of bias can always be present in oral examination - **To eliminate such bias, it has been consistently held that marks allotted for oral examination should be less than 25% of total marks** - Nature of oral examination and basis for assessment of candidates not known - Conducting of examinations and Public Notice No. 1 of 2019, wherein both written examination and oral examination were stipulated struck down - **Petitioner who passed written examination to be appointed as G Card Holder, if he is otherwise eligible - Regulations 2(h) and 13 of Customs Brokers Licensing Regulations, 2018.** - *Object of any examination is to ensure that qualified candidate promoted to next post. If examination conducted with the object to reject candidates, then examination itself to be struck down.*

6. ASIAN FREIGHT

Versus

PRINCIPAL COMM. OF CUS. (AIRPORT & ADMINISTRATION)

2020 (373) E.L.T. 323 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs Broker - Suspension of license, Confirmation of - Attempt to smuggle consignment of high valued misdeclared goods from Singapore to India in guise of Nepal import - Petitioner arguing respondent acting in excess of jurisdiction by confirming order of suspension and calling for immediate action in nature of interim suspension - *HELD* : Having regard to materials disclosed, instant case not one where no reasons have been disclosed why immediate action was not required or warranted - Nature of order dated May 3, 2016 together with observations contained therein provide sufficient grounds to distinguish Division Bench decision in N.C. Singha [1998 (104) E.L.T. 11 (Cal.)] - Although respondent may not have disclosed in order impugned why decisions placed before him were not applicable, mere omission to do so cannot be held fatal - Reasons furnished for confirming order of suspension, sound and justify acceptance - Action taken under Regulation 19 of Customs Brokers Licensing Regulations, 2013 unexceptionable and no interference called for - Regulation 19 of Customs Brokers Licensing Regulations, 2013. - *The seized goods, having estimated market value of ` 5.5 crore, appeared to be liable for confiscation under Sections 111(l), 111(m) & 111(n) of the Customs Act and that the first petitioner, being the declared importer's agent, had filed the CTD (Import) with the customs authority with signatures of its director on the prescribed declarations in a mechanical manner, without observing the basic principle of representing its client based in Nepal. Such order also records the acceptance of the fact by a director of the first petitioner that it had undertaken the job of handling import consignment of M/s. Jaleswor Traders for the first time but appeared not to have discharged their basic responsibilities by failing to comply with the provisions of the 2013 Regulations. Considering that an inquiry ought to be made in the manner prescribed by Regulation 20 for the first petitioner's failure to comply with the provisions of the 2013 Regulations, the first respondent was of the further view that continuation of business transaction by the first petitioner would be prejudicial to the interest of the revenue and immediate action under Regulation 19(1) of the 2013 Regulations is warranted to prevent further misuse of the customs broker license resulting in the order dated May 3, 2016 seeing the light of the day. It is no doubt true that after the DRI on July 11, 2014 detected the offence committed by the Nepalese importer, for whom the first petitioner acted as a customs broker, sufficient time had elapsed and in the meanwhile, the license was also renewed but that does not detract from the fact of receipt of the offence report by the first respondent on April 19, 2016, and initiation of action for suspending the license, for the reasons mentioned in his order, immediately thereafter within 2 (two) weeks.*

Writ Petition against Show Cause Notice - Maintainability of - Interference at show cause stage should be few and far between - Noticee ought to be relegated to authority issuing notice to decide whatever objections noticee might have had - However, in a given case, where High Court is satisfied that show cause notice is totally non est in eye of law for absolute want of

jurisdiction of authority to even investigate into facts, entertainment of writ petition in this behalf may not be imprudent - Article 226 of Constitution of India.

Customs Broker's Licence - Revocation of - Time-limit for issuing show cause notice, whether directory or mandatory - It is settled by catena of decisions rendered by Supreme Court, while considering varying statutes, that when public functionary is required by statute to do or perform certain thing or activity within specified time, same is ordinarily directory; however, if consequence for inaction on part of statutory authority within such specified time expressly provided in statute, it must be held to be imperative.

Customs Broker's Licence - Revocation of - Limitation - Time-limit for initiation of action for revocation of license against by notice - *HELD* : Time-limit prescribed serves dual purpose - First, it acts as check on public functionary vested with power to initiate revocation proceedings not to keep issue pending ad infinitum; if proceedings not initiated within stipulated time, that might expose such functionary empowered to initiate proceedings to disciplinary action - On the other hand, initiation of proceedings within ninety days or immediately thereafter intended to guarantee protection to Customs Broker of not being proceeded against on the basis of stale charges - But to hold that in every case where revocation proceedings not initiated within time-limit in Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 Customs Broker may get away, too far-fetched a construction and is unacceptable - Regulation 20 of Customs Brokers Licensing Regulations, 2013 does not provide for any consequence, should proceedings be not initiated within ninety days of receipt of offence report - In absence of consequence such as one mentioned in Section 110(2) of Customs Act, 1962 time-limit ought to be construed as directory and not mandatory - Regulation 20 of Customs Brokers Licensing Regulations, 2013.

Customs Broker - Revocation of licence - Limitation - Issuance of show cause notice under Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 - Relevant date - Petitioner arguing Show Cause Notice dated July 18, 2016 issued beyond period prescribed by sub-regulation (1) *ibid* - *HELD* : Impugned show cause notice issued on July 18, 2016, dispatched on July 20, 2016 and received by petitioner on July 21, 2016 - Receipt of Offence report on April 22, 2016 amply proved from annexures to Affidavit - Regulation 20(1) *ibid* ought to be reasonably construed and so construed, time-limit of ninety days must be held to commence from date offence report reaches Principal Commissioner or Commissioner of Customs, as case may be, authorized to issue show cause notice - Point answered against petitioner - Regulation 20(1) of Customs Brokers Licensing Regulations, 2013.

Customs Broker - Revocation of order of suspension - Petitioner seeking relief granted by Division Bench decision in *Md. Yeasin v. State of West Bengal* requiring completion of proceedings within three months from date of service of notice - *HELD* : Petitioner yet to respond to show cause notice - Reasoning on which suspension directed to be revoked in *Md. Yeasin* (*supra*) not available, in view of distinct facts and circumstances - If at all proceedings for revocation not completed within time-limit stipulated in sub-regulation (7) of Regulation 20 of Customs Brokers Licensing Regulations, 2013 petitioners may approach Court afresh for revocation of order of suspension dated May 31, 2016 - Petitioner not entitled to relief of revocation of order of suspension - Regulation 20 of Customs Brokers Licensing Regulations, 2013.

7. PREMIER SHIPPING AGENCIES

Versus

COMMISSIONER OF CUSTOMS

2015 (315) E.L.T. 27 (Del.)

IN THE HIGH COURT OF DELHI

Summary:

Customs Brokers Licensing Regulations, 2013 - Regulation 21 - Vires and scope of - Appeals under this Regulation are not limited to orders of revocation of licence under Regulation 18 ibid or order of suspension of licence under Regulation 19 ibid - Power of C.B.E. & C. under Section 146(2) of Customs Act, 1962 to regulate business of Custom agents covers all facets of their business, and not circumscribed to its specific clauses - **There is no lack of competence/or authority with C.B.E. & C. to provide for appeals as stipulated under Regulation 21 ibid against all orders of Commissioner passed under these regulations, including under Regulation 23 ibid - Contrary view of CESTAT, Mumbai in S.N.M. Agency [2014 (304) E.L.T. 255 (Tribunal)] overruled.**

8. UNITED CUSTOMS HOUSE AGENCY PVT. LTD.

Versus

UNION OF INDIA

2016 (332) E.L.T. 776 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs Broker's Licence - Prohibition from working as such - Powers to prohibit - Scope of - Said power under Regulation 23 of Customs Brokers Licensing Regulations, 2013, being an extraordinary power, to be exercised sparingly - Prohibition undertaken in Revenue's interest, must not be made permanent or indefinite - **Action for suspension or revocation of licence to be undertaken thereafter without delay - Further, in case of exigencies, prohibition order can be issued without prior show cause notice or hearing** - However, it must be preceded with immediate disclosure of reasons for such prohibition and post-decisional hearing - Instant case, prohibition order having been issued several years back and no further action taken thereafter, set aside - However, Revenue at liberty to undertake fresh appropriate action in terms of aforesaid directions - Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Customs Broker - Prohibition from working as such - Show Cause Notice, requirement of - Hearing - Post-decisional hearing - Natural justice - Not necessary to issue a prior show cause notice or to grant hearing before issuing prohibition order against a Customs Broker - Myriad games that Customs Brokers along with importers and exporters play, may lead to exigency where immediate prohibition is necessary - Principles of natural justice only requiring that person on whom penalty of prohibition is imposed, is made known of shortcomings - On affording a post-prohibition hearing to Customs Broker, natural justice not violated - Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Precedent order - Reason in order - Reason in support of an order operate as precedent and not order itself - Order relied upon by assessee, not indicating any reason as to why a pre-decisional hearing required to be granted in every case, not applicable - Article 226 of Constitution of India.

9. D.H. PATKAR & CO.

Versus

COMMISSIONER OF CUSTOMS (G), MUMBAI

2005 (187) E.L.T. 245 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

Summary:

Custom House Agent's licence - **Revocation of - Lack of supervision and control of CHA over his employees brought out in report of Enquiry Officer** - Contravention of Regulations 14(h) and 14(j) of Custom House Agents Licensing Regulations, 1984 - **Fact that there is no finding of knowledge of CHA in such violation, not sufficient to hold that Regulations have not been violated - Revocation of CHA licence is upheld** - Regulation 20(7) *ibid*.

Custom House Agent's Licence - Revocation of - CHA alleged to have received a commission from his employee and did not verify documents, resulting in undervaluation by importer - Allegation not proved in the face of Enquiry Officer's report that CHA is not expected to have knowledge that goods described in invoice where invoice value obviously tallies with value declared in bill of entry, have been undervalued - Regulations 14(j) and 20(7) of Custom House Agents Licensing Regulations, 1984.

10. BOMBAY SHIPPING AGENCY

Versus

COMMR. OF CUS. (GENERAL), MUMBAI

2016 (343) E.L.T. 647 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

Summary:

Custom House Agent's Licence - Revocation and forfeiture of security deposit - Violation of Custom House Agent's Licensing Regulations, 2004 - **CHA filed new set of Shipping Bills for same consignment when enquiry initiated against exporter on fraudulent drawback** - FOB value and unit price changed in new Shipping Bills while retaining other details, leading to reduction of drawback - **Submitted letter to CWC (Custodian) and Appraiser and not to competent authority i.e. Deputy/Assistant Commissioner, authorized to allow amendment - Revocation of licence ordered by Commissioner for violation of various provisions of CHALR, 2004 - HELD** : Exporting firm's address found non-existent or incomplete - Existing address not used for conducting business - Director's address not located - **IEC Code not obtained with clean intention - CHA required to verify antecedents of exporter, his identity and functioning at given address but simply received export documents through unauthorized representative of exporter - Violation of provisions of Regulation 13(o) established.**

Custom House Agent - **Letter for amendment of Shipping Bills signed by person not authorized to sign such documents - CHA exercised no control on his employees in ensuring that his employees do not make any violation in getting work from unauthorized persons - Violation of Regulation 19(8) established.**

Custom House Agent - Punishment - **Violation of Regulations 13(o) and 19(8) established - Penalty of permanent revocation too harsh - Revocation ordered to be continued till 31-12-2015 and security deposit also forfeited** - Regulation 20 of Customs House Agents Licensing Regulations, 2004.

Note: Cases Cited in the Order

1. Commissioner v. H.B. Cargo Services — 2011 (268) E.L.T. 448 (A.P.)
2. Jasjeet Singh Marwaha v. Union of India — 2009 (239) E.L.T. 407 (Del.)
3. OTA Kandla Pvt. Ltd. v. Union of India — 2011 (269) E.L.T. 457 (Guj.)
4. Saini Consultants v. CESTAT, Delhi — 2012 (282) E.L.T. 221 (P & H)

11. RATNADIP SHIPPING PVT. LTD.

Versus

COMMR. OF CUSTOMS (GENERAL), MUMBAI

2015 (330) E.L.T. 488 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

Summary:

Custom House Agent's Licence - Revocation of - Regulations 13(d), (e), (i) & (n) of Customs House Agents Licensing Regulations, 2004 (CHALR) - Violation of - Abetment in submission of fabricated Bills of Entry by importer using forged signatures of Customs officers and mis-declaring description and value of goods - Signature and rubber stamp of CHA on backside of original copy of Bill of Lading showing awareness of CHA regarding said mis-declaration - **HELD** : No evidence on record indicating CHA aided and abetted importers in evasion of duty - No mis-declaration by importer in the beginning, and only later, having established trust, forged and fabricated documents sent by said importer through Fax to CHA making minor alterations in quantity and description of goods which not noticeable by man of ordinary prudence - Original and forged documents look same at first glimpse and manipulation can be noticed only on careful scrutiny - In absence of any finding on charges of aiding and abetting in fraud, charges under said Regulations 13(d) & 13(e) *ibid* not proved - As held in impugned order, forgery of official documents and signatures by importer cannot *ipso facto* form ground of violation of Regulation 13(i) *ibid* - However, **charges under said Regulation 13(n) of negligence of duty proved by not comparing carefully invoice/Bill of Lading received by Fax with originals received subsequently and failure to correct mistakes in description of goods, as admitted by Director of CHA Firm - Such negligence due to inadvertence and not a case of gross negligence or misconduct - As such, period of revocation restricted up to 30-11-2015 and CHA Licence to be made operative thereafter - Forfeiture of security deposit reduced to 50% of said amount.**

Note: Cases cited in the Order

1. Commissioner v. Worldwide Cargo Movers — 2010 (253) E.L.T. 190 (Bom.) — **Distinguished**
2. Sri Kamakshi Agency v. Commissioner — 2001 (129) E.L.T. 29 (Mad.) — **Distinguished**

12. D.V. R. FREIGHT FORWARDERS PVT. LTD.

Versus

C.C. (SEAPORT-IMPORT), CHENNAI

2015 (325) E.L.T. 848 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs House Agent's Licence - Suspension and revocation of Custom House Agent's licence - Writ jurisdiction - Commissioner (Appeals), while exercising the powers conferred under the provisions of Regulation 20(7) of Customs Brokers Licensing Regulations, 2013 ordered revocation of licence of Customs broker as well as forfeiture of full amount of security - **Order was not passed contrary to principles of natural justice or beyond his jurisdiction - Power under Article 226 of Constitution of India is an extraordinary power and should be exercised by High Courts only in those cases where the statutory authority has not acted in accordance with the provisions of enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed or when an order has been passed in total violation of principles of natural justice causing prejudice to aggrieved party** - Writ jurisdiction declined - Article 226 of Constitution of India.

Note:

1. CASES CITED

1. GAC Shipping (India) Pvt. Ltd. v. Union of India — 2014 (308) E.L.T. 410 (Bom.) — *Referred*
2. Hamid Fahim Ansari v. Commissioner — 2009 (241) E.L.T. 168 (Bom.) — *Referred*
3. Oryx Fisheries Pvt. Ltd. v. Union of India — *Relied on*
4. State of U.P. v. Maharaja Dharmendar Prasad Singh — AIR 1989 SC 997 — *Referred*
5. Titaghur Paper Mills Co. Ltd. v. State of Orissa — (1983) 2 SCC 433 — *Relied on*
6. Whirlpool Corporation v. Registrar of Trade Marks — (1998) 8 SCC 1 — *Relied on*

2. The order was **affirmed** in 2015 (326) ELT 108 (Madras High Court)

13. NOBLE AGENCY

Versus

COMMISSIONER OF CUSTOMS, MUMBAI

2002 (142) E.L.T. 84 (Tri. - Mumbai)

IN THE CEGAT, WEST ZONAL BENCH, MUMBAI

Summary:

Customs House Agent - Subletting of licence - Proof - Statement of defence witness that employer for whom he was working did not have CHA licence and that he was using licence of the noticee CHA on payment of monthly sums is sufficient to prove subletting of licence - Regulation 13 of Customs House Agent Licencing Regulations, 1984.

Customs House Agent's Licence - **Revocation of - Subletting of licence for pecuniary benefit and failure to maintain accounts proved against CHA - Matter has to be viewed seriously - Order revoking licence upheld and plea for taking lenient view rejected** - Regulations 13, 14 and 21 of Customs House Agent Licencing Regulations, 1984.

Customs House Agent - Punishment - **Mens rea - Contravention of obligations even without intent is sufficient to invite punishments listed in Customs House Agent Licencing Regulations, 1984 - Deliberate contravention has to be dealt with most seriously.**

Order - Appellate Tribunal is creature of statute and cannot grant relief, power for which does not come from its parent statute - Section 129B of Customs Act, 1962.

Customs House Agent's Licence - Revocation of - Lenient view - Contraventions of obligations proved against CHA - Tribunal does not have power to take lenient view and restore the licence revoked by lower authorities - Regulation 21 of Customs House Agent Licencing Regulations, 1984.

Note:

CASE CITED:

Noble Agency v. Commissioner — 2002 (142) E.L.T. 84 (Tribunal) — **Approved**

14. CARGO CLEAR INTERNATIONAL

Versus

COMMISSIONER OF CUSTOMS, COCHIN

2008 (224) E.L.T. 450 (Tri. - Bang.)

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE

Summary:

Customs House Agent's Licence - Withdrawal of temporary licence - **Authorized signatory failed to qualify examination in spite of several opportunities given to her - No provision in Customs House Agent's Licencing Regulation, 2004 for permitting appointment of a person after withdrawal of temporary licence** - Withdrawal of temporary licence also justified - Regulations 9 and 20 ibid.

Note:

The case was Affirmed in 2015 (319) ELT A71 (Kerala High Court).

15. UNION OF INDIA

Versus

SHASHI DEO JHA

1999 (113) E.L.T. 385 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Appeal is a continuation of original proceedings - Sections 128 and 129A of Customs Act, 1962 - Sections 35 and 35B of Central Excise Act, 1944.

Order - Discretionary power has to be exercised on sound legal principles and reasonably, not on whims or caprice - Sections 122 and 146A of Customs Act, 1962 - Section 33 of Central Excise Act, 1944.

Customs House Agents Licence - Suspension of - Reasons for 'expediency of suspending the licence immediately' are required to be recorded - Regulation 21(2) of Custom House Agents Licensing Regulations, 1984.

Custom House Agents - **Suspension of licence cannot be indefinite as it affects livelihood of the Agent** - Suspension having been ordered eight months ago, further proceedings by way of inquiry against the petitioner must peremptorily be initiated within one month, failing which order of suspension shall stand revoked - **Authority must not be permitted to achieve a goal (punishing the C.H.A) indirectly which it cannot achieve directly** - Regulation 21(2) of Custom House Agents Licensing Regulations, 1984.

Writ jurisdiction not exercisable in case of existence of alternative remedy - Normally, there are three exceptions to this Rule : (1) where the petition has been filed for enforcement of a Fundamental Right, (2) where there has been a violation of principles of natural justice or (3) where the impugned order or proceedings are wholly without jurisdiction or vires of a statute is challenged - Petitioner having challenged Commissioner's jurisdiction in passing suspension order of his C.H.A. licence and the matter having been heard on merits by the single Judge, not proper to direct the petitioner to avail of alternative remedy at writ appeal stage - Article 226 of Constitution of India.

Writ jurisdiction exercisable to interfere with an order which is unreasonable and wholly irrational but not when the order is partly sustainable on other materials on record which were sufficient for passing the order - Article 226 of Constitution of India.

16. INTERPORT IMPEX PVT. LTD.

Versus

COMMISSIONER OF CUSTOMS, MUMBAI

1999 (107) E.L.T. 36 (Tribunal)

IN THE CEGAT, WEST ZONAL BENCH, MUMBAI\

Summary:

Custom House Agent's licence - Suspension of - **Fraudulent refund obtained by employee of CHA - No evidence of involvement of any of the Director or any other employee in the fraud - Firm did not exercise its supervision and control over its employees specified in Regulation 20(7), is not sufficient to suspend the licence** - Provisions of Regulation 21(2) to be resorted to when it is necessary to immediately stop functioning of a Custom House Agent in order to safeguard the interests of the Custom House - Regulations 20 and 21 of Custom House Agent's Licensing Regulations, 1984.

- It may be, that the firm did not exercise its supervision and control over its employees specified in sub-regulation (7) of Regulation 20. This however, is not sufficient to suspend the licence in the manner, which it has been done. **The provisions of sub-regulation (2) of Regulation 21 should be resorted to when it is necessary to immediately stop the functioning of a Custom House agent in order to safeguard the interest of the Custom House.** The principles of natural justice provided for in sub-regulation (3) of Regulation 20 can thus be dispensed with. The existence of such situation has not been shown. The activities of Dinesh Yadav, came to the notice of the Custom House in October, 1998. The fact of dismissal of the employee by appellant was also been communicated to the Custom House in December, 1998. In the absence of any material, whatsoever, to show either the involvement of any of the Director or even any other employee of the appellant in the involvement of the fraud stated to have been committed, invoking the provisions of Regulation 21(2) not justified.

17. EAGLE TRANSPORT SERVICES

Versus

COMMISSIONER OF CUSTOMS, MUMBAI

1997 (96) E.L.T. 469 (Tribunal)

IN THE CEGAT, WEST ZONAL BENCH, MUMBAI

Summary:

Custom House Agent's Licence - Cancellation of - **Charges against agent, of subletting licence to a shipping company by falsely stating that the Manager and four employees of the company are his own employees; and of handing over signed but otherwise blank shipping bills to the company** - Transfer of the licence in all but name - Proprietor knowingly passed on a large number of documents which can be misused - Charges held as proved - Cancellation of licence upheld - Regulation 21 read with Regulations 13 and 14(b) of CHALR, 1984

- Proprietor of the appellant had in his statement admitted that he obtained Customs Passes for two employees of Amol Shipping Agency and deck passes for two other employees. It is not in dispute that in the application for the issue of passes these persons were represented as employees of the appellant. **It is clear from the record that the appellant had given more than 100 blank shipping bills form to Amol Shipping Agency. In this context the contention that there was no legal transfer of the licence is simplistic.** In the present case the proprietor has knowingly passed on a large number of documents which can be misused. We have to agree with the Commissioner's finding that such a person is unfit to carry on the business of Customs House Agent. We, therefore, decline to interfere. [1996 (84) E.L.T. 226 (Tribunal) distinguished].

Custom House Agent - Role and status in the clearance of goods through Customs and Port Trust - Regulations 13, 14 and 21 of the Customs House Agents Licensing Regulations, 1984. - A Custom House Agent has a significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of either specialised laws and detailed procedures often conduct complexed. It is not possible for every layman to have the requisite knowledge and the time to personally undertake such clearances. It is for this reason that Custom House Agents have been licensed. The Regulations of 1984 provide for stringent conditions to be fulfilled before a person is appointed as licensee. The applicant must be financially sound. He must have experience of clearance through Customs. Before he is granted permanent licence he has to qualify an examination in which his knowledge of relevant procedures is vested. Regulation 14 places various obligations on a Custom House Agent. The object of these to ensure that the Custom House Agent acts honestly and efficiently in the conduct of his business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provide are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. **The Custom House Agent thus can the status of a professionally qualified person akin to an Advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods.** The damage done to innocent importers by misleading their documents for such purposes by Custom House Agent would be enormous.

18. WELCOME AIR EXPRESS PVT. LTD.

Versus

COMMR. OF CUS. (AIRPORT & ADMINISTRATION)

2022 (380) E.L.T. 544 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs House Agents License - Revocation of - Export order received by appellant not sourced from exporter directly but from freight forwarder - **“Let Export Order” said to have been given by Customs authorities cannot waive or dilute obligations of appellant as CHA - Appellant handled job without verifying antecedents of declared exporter and allowed freight forwarder to use their CHA license for financial considerations** - Further, Jetty Sircar who actually did clearance work at dock was not an employee of appellant and appellant authorized three employees of freight forwarder for obtaining Jetty Sircar license which tantamounts to not carrying out their obligations as CHA - None of these employees was approved by Customs Authorities - **Statement of appellant’s MD not retracted at earliest but merely retracted as an afterthought** - Appellant violated Regulations 13(b) and 19 of Customs House Agents Licensing Regulations, 2004 - Revocation of CHA license granted to appellant and forfeiture of security deposit confirmed.

Customs House Agents License - Revocation of - Customs House Agents Licensing Regulations, 2004 (CHALR) being a special law which governs duties, responsibilities and obligations of CHA, dropping of penalty proceedings under Customs Act cannot have any impact on revocation of licence granted under CHALR - Moreover, appellant not completely exonerated by Commissioner while dropping penal action under Customs Act, appellant themselves having stated at best they can be proceeded under CHALR - **Any contravention of obligations cast on CHA even without intent would be sufficient to invite upon CHA the punishments listed in Regulations.**

19. INFO CAPITAL LOGISTIC CO.

Versus

COMMISSIONER OF CUSTOMS, NEW DELHI

2022 (380) E.L.T. 343 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Summary:

Penalty on Customs Broker/freight forwarder - Export of prohibited goods - Appellant Custom Broker, duty bound to verify antecedents and genuineness of importer exporter code, IEC number, identity of its client and functioning of its client at declared address by using reliable, independent and authentic documents/data/information - **Appellant-Custom Broker did not meet exporter or IEC holder or person who originated prohibited goods for exporter - Such negligence facilitated mischievous exporter in attempting to export prohibited goods** - Appellant similarly facilitated export of about eight consignments in recent past reasonably believed to contain prohibited goods - Freight forwarders-appellants acted as facilitator of export of prohibited goods and acted as agents of Custom Broker directly or indirectly - **Freight forwarders also duty bound to observe KYC norms and to assist Custom Broker in complying with his obligation under Customs Broker Licensing Regulation, 2013** - No profit made by appellants or no participation in any profit in export of prohibited goods - Rather, these persons acted on normal remuneration basis as freight forwarder - Quantum of penalty imposed reduced - Section 114 of Customs Act, 1962.

20. FREIGHT LOGISTICS

Versus

COMMR. OF CUS. (AIRPORT & GENERAL), NEW DELHI

2022 (379) E.L.T. 368 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Summary:

Customs Broker Licence - Suspension of licence, confirmation of - Time limit - Attempt to smuggle fabric used to make masks to China by mis-declaring it as packing material and using Importer Exporter Code (IEC) of a company without their knowledge or involvement - **Suspension of licence is to be done where immediate action is required but assessment of need for immediate action should be based on prima facie view about role played by Customs Broker** - Investigation of alleged offence and role, if any, played by Customs Broker was to be undertaken by Customs Officers - In instant case, after completion of investigation, show cause notice was issued in main case of attempted illegal export where appellant was also made co-noticee and penalties were proposed to be imposed - At this point there was sufficient material to proceed against Customs Broker and within a week licence of Customs Broker was suspended which was confirmed within another eight days - Therefore, there was no inordinate delay as alleged in issuing suspension order - Regulation 16(2) of Customs Broker Licensing Regulations, 2018.

Customs Broker Licence - Suspension of licence, confirmation of - **Recording of reasons for taking immediate action for suspension of licence having already been done under Regulation 16(1) of Customs Broker Licensing Regulations, 2018, such reason is not required to be recorded again while confirming suspension under Regulation 16(2) ibid** - Impugned order confirming suspension of license of appellant being fair and reasonable, needed no inference.

21. ORIENT CLEARING & FORWARDING AGENCY

Versus

UNION OF INDIA

2001 (136) E.L.T. 3 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs House Agent's Licence - Suspension of - Regulation 21(2) of Customs House Agents Licensing Regulations, 1984 - Words "immediate action" can be applied on the basis of the conclusion of the prima facie investigation - Such words **"immediate action" cannot lose its force so far the matter is concerned when such immediate action was taken by the authority immediately after completion of prima facie investigation and passing order.**

Customs House Agent's licence - Suspension of - When the wide powers given to the Collector of Customs had not been misused or arbitrarily used and when such power has been exercised for immediate action, the court is debarred from interfering with the order - Regulation 21(2) of Custom House Agents Licensing Regulation, 1984.

Customs House Agent's Licence - Suspension of - "Immediate action" of suspension of licence cannot be said to be in violation of the principles of natural justice or can be equated with the principle of "black listing" or "ban" because such actions were made without giving an opportunity of hearing wherein in the instant case elaborate hearing was given and no final adjudication is made as yet.

Customs House Agent's Licence - **Suspension of - Regulation 21(2) of the Custom House Agents Licensing Regulations, 1984 - Scope - Regulation 21(2) cannot be confined to the rigidity of the words "immediate action" alone - It has to be considered in the proper prospective because other relevant words are important for the purpose of coming to an appropriate conclusion in this regard.**

Custom House Agent's Licence - Suspension of - **"Immediate action"- It cannot be said that "immediate means as and when the consignment was imported as per the bills of entry alone - Word "immediate" cannot stop the authority concerned from taking steps during the pendency of the enquiry because the time has not stopped from running - Regulation 21(2) of Custom House Agent's Licensing Regulations, 1984.**

Customs House Agent's Licence - Suspension of - Words and phrases - "Immediate action" - **Regulation 21(2) of Custom House Agent's Licensing Regulations, 1984 - Subtlety of the words "immediate action" are dependable upon the words "notwithstanding", "in appropriate cases" and "where an enquiry against such agent is pending or contemplated" or any one of such event.**

22. D.S. CARGO AGENCY

Versus

COMMR. OF CUS. (AIRPORT & GENERAL), NEW DELHI

2020 (371) E.L.T. 611 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Summary:

Customs Broker's Licence - Revocation of - Limitation - Contravention of various provisions of Customs Brokers Licensing Regulations, 2018 and erstwhile Customs Brokers Licensing Regulations, 2013 - *HELD* : Event of issuance of notice mutually exclusive to event of service of notice and two cannot be equated as one unless and until there apparent intention of Legislative Provision - Issuance of notice always to precede service thereof - As per Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 competent authority needs to issue notice within period of 90 days, meaning former event of issuance then service thereof ought to have been completed within 90 days - However, decision of Co-ordinate Bench in R.P. Cargo case, contrary to said conclusion - In view of difference of opinion of two Co-ordinate Benches, matter may be referred to Larger Bench for following reference : (1) Whether word "issue" in Regulation 20(1) ibid should include "serve" and (2) Whether time-limit prescribed in Regulation 20(1) ibid mandatory or directory in nature - Regulation 20(1) of Customs Brokers Licensing Regulations, 2013. - *I hold that the show cause notice by the Commissioner of Customs under Regulation 20(1) of CBLR, was to be issued within the period of 90 days of receiving the offence report, and that the provisions do not intent for it to be served also within the said 90 days. **Otherwise also the provision of statute has to be taken as directory when there is no apparent and intentional delay on part of the Department rather the noticee has committed the illegal act in violation of the provisions of the Act.***

Interpretation of statutes - While interpreting a word in statute, intention of Legislature in that particular Section or the Act, ought to be looked into, as a whole, to appreciate as to whether any general word irrespective having overlapping meaning, ought to be read in limited sense or in broader sense - While giving any interpretation whether limited or wider, it should be observed that object of statute shall not be forfeited or interpretation may not lead to absurd results. - *The Cardinal Rule of Interpretation is to allow the general words to take their natural wide meaning unless the language of statute gives a different indication or such meaning is likely to lead to absurd results. It is in the later case only that the meaning of the general word may be required to fall in line with the specific things designated by the preceding words. General words must ordinarily bear their natural and larger meaning and need not be confined to ejusdem generis unless the language of statute spells out intention to that effect.*

Show Cause Notice - Service and issuance thereof - No notice can be served without issuance of same by concerned Competent Authority - Event of issuance to precede event of service of notice - Regulation 20(1) of Customs Brokers Licensing Regulations, 2013.

23. A.M. AHAMED & CO.

Versus

COMMISSIONER OF CUSTOMS (IMPORTS), CHENNAI

2014 (309) E.L.T. 433 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Brokers Licence - Revocation of - Challenge to, on ground that proceedings initiated beyond prescribed time-limit - Determination of 'offence report' therefor as well as manner of calculation of period of 90 days - Power to suspend or revoke the licence is contained in Regulation 20 of Customs House Agents Licensing Regulations, 2004 and procedure therefor is contained in Regulation 22 *ibid* which states that Commissioner of Customs should issue a notice in writing within 90 days from the receipt of offence report - However, what needs to be determined is what an offence report is and how the period of 90 days is to be calculated - **Since the expression 'offence report' is not defined, it is presumed that a report indicating the availability of any one of the 3 ingredients in Regulation 20(1) *ibid* should be construed as an offence report** - Then, the date of knowledge gained by the Commissioner, by means of any communication, has to be construed as the date of receipt of offence report - Similarly, time limit prescribed in Regulation 22(1) *ibid* has to be understood in the context of strict time schedule prescribed in various portions of the Regulations, such that whole proceedings are to be commenced within a time limit as well as concluded therein - On facts, show cause notice issued to petitioner on 8-5-2010, with a copy marked to the Commissioner of Customs should be taken as the date of receipt of the offence report, and 90 days period should commence from that date, such that impugned proceedings held to have been initiated beyond period of 90 days and thus, set aside - Regulations 20 and 22 *ibid* - Regulation 20(7) of Customs Brokers Licensing Regulations, 2013 - Section 146(2) of Customs Act, 1962 - Article 226 of Constitution of India.

Customs Brokers Licence - Revocation of, along with forfeiture of security deposit - Basis thereof being misdeclaration of country of origin and undervaluation of goods - Challenge to, on ground that importer having settled the matter, should not be penalized - Ground accepted as revocation of licence would throw the broker out of business once and for all, depriving him of his very livelihood - Thus, once the importer has escaped on having made a true and full disclosure before the Settlement Commission, it would be unfair to impose such extreme penalty on broker - Such order, thus, set aside - Regulation 20(7) of Customs Brokers Licensing Regulations, 2013 - Regulations 9(1), 13(b), 13(d), 13(e), 20 and 22 of Customs House Agents Licensing Regulations, 2004 - Sections 112(a) and 114AA of Customs Act, 1962 - Article 226 of Constitution of India.

24. TRADE WINGS LOGISTICS INDIA PVT. LTD.

Versus

COMMR. OF CUS., CHENNAI-VIII

2019 (370) E.L.T. 510 (Tri. - Chennai)

IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI

Summary:

Customs Broker licence - Suspension of - Import of undeclared goods - **Broker not directly collecting authorization letter and KYC norms of importer - Regulations 11(a) and 11(m) of Customs Brokers Licensing Regulations, 2013 does not specifically mention that Customs broker has to obtain KYC norms from importer directly but only states that broker has to comply with obtaining KYC documents** - Not case of Department that broker played any active role in importation of misdeclared consignment - Revocation proceedings not initiated even after 9 months of issuance of show cause notice - Regulation 19(2) ibid for suspension of licence not to be used for issuing orders of suspension indefinitely so as to give effect of revocation of licence so as to obstruct Customs Broker from engaging in his activities of livelihood indefinitely - Time limit prescribed under Regulation 22 ibid must be adhered to - Order for continuation of suspension of Customs Broker licence unjustified and set aside.

25. SYED JAMEEL UDDIN

Versus

COMMISSIONER OF CUSTOMS, HYDERABAD

2019 (369) E.L.T. 1053 (Tri. - Hyd.)

IN THE CESTAT, REGIONAL BENCH, HYDERABAD

Summary:

Customs House Agent's Licence - Revocation and forfeiture of security deposit - Fraudulent exports - Show cause notice alleging license sublet to Shri Uma Mahesh, Managing Partner of V.D. Logistics for ₹ 25,000 per month and violation of conditions of Customs Broker Licensing Regulations, 2013 for non-verification of antecedent and existence of exporters - Assessee claiming statement obtained from Shri Uma Mahesh under duress and shipping bills on two importers filed by them after verifying IEC with JDGFT, addresses of parties and CST number - **HELD : Fact of subletting of licence for filing shipping bills in respect of exporters without verifying antecedents revealed when Shri Uma Mahesh questioned by officers of DRI - Such statement at no point of time retracted until cross-examination during adjudication proceedings** - Statement of Shri Uma Mahesh corroborated by fact that ₹ 25,000 per month transferred to assessee - If shipping bills for parties filed by assessee, assessee ought to have verified antecedents of exporters or at least their existence - **When statement retracted by Shri Uma Mahesh, Departmental Officers ought to have further questioned about amounts being transferred and confronted with bank transfers to establish that license, indeed, sublet to him** - Hence, benefit of doubt may be given to assessee that shipping bills filed using services of Shri S. Uma Mahesh - However, assessee failed in discharging obligation under Regulation 11(a) of Customs Broker Licensing Regulations, 2013 in not verifying antecedents of exporters and Regulation 17(a) ibid in not supervising work of employees - Penalty of ₹ 50,000 imposed under Regulation 22 ibid appears sufficient - On payment of penalty, assessee's license to stand restored and forfeiture of security deposit also stands set aside - Upon payment of penalty, license shall stand restored forthwith and forfeiture of security deposit to stand set aside - Regulations 10, 11(a), 17(a), 18 and 22 of Customs Brokers Licensing Regulations, 2013.

26. K.V. PRABHAKARAN

Versus

COMMISSIONER OF CUSTOMS, CHENNAI

2019 (365) E.L.T. 877 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Penalty on Customs Broker - Misuse of CHA license - Abetting stakeholders in attempt of smuggling of prohibited goods - Assessee's attitude in lending CHA license to third party for usage without knowing actual importer and goods to be imported, serious issue - **Imposition of penalty of sum of ₹ 5 lakhs by invoking provisions of Customs Act, 1962 not only justifiable but also acceptable** - Compared with assessee's omission and commission, no excess imposition of penalty on Revenue's part - **Impugned order liable to be sustained - Substantial questions of law answered in favour of Revenue - Section 114 of Customs Act, 1962.**

27. R.S.R. FORWARDERS

Versus

COMMISSIONER OF CUSTOMS, NEW DELHI

2018 (364) E.L.T. 541 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Summary:

Customs House Agent's Licence - Revocation of - Time-limit of 90 days for issue of show cause notice under the Customs Broker Licensing Regulations, 2013 commences with receipt of offence report - Even though, the detecting agency noticed the contraband in the export container as early as 20-8-2014, the licensing authority was in a position to initiate proceeding under the Customs Broker Licensing Regulations, 2013 only after receipt of the offence report from DRI - **Inasmuch as the offence report contained in alleged violation of CBLR was received by Commissioner of Customs, New Delhi only on 15-12-2016 the show cause notice which was issued on 20-8-2017 within time and cannot be held to be time-barred.**

Customs House Agent's Licence - Revocation of - **Customs House Agent was not directly involved in carrying the prohibited red sanders wood, along with non-basmati rice used for concealing goods - However, CHA had the responsibility to verify the antecedents of exporter and the genuineness of export documents before filing the same** - Role of CHA in the Customs procedure is significant - CHA is expected to safeguard the interest of exporter of goods as well as the Customs - Appellant is guilty of violation of various regulations of Customs Broker Licensing Regulations, 2013 - Even though appellant is guilty, the violations are not so grave as to justify the revocation of Customs licence - Forfeiture of security deposit of ₹ 75,000 and in addition imposition of penalty of ₹ 50,000 sufficient.

28. POONIA & BROTHERS

Versus

COMMISSIONER OF CUSTOMS (PREVENTIVE), JODHPUR

2018 (363) E.L.T. 134 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Summary:

Customs House Agents licence - Renewal thereof - Suspension of CHA licence for misconduct, subsequently revoked subject to penalty - Impugned order rejecting renewal application in terms of Regulation 9(2) of Customs Brokers Licensing Regulations, 2013, challenged - **HELD : Assessee's plea of licence not revoked but suspension thereof, not to extend unfettered right to CHA to seek renewal of said licence at time of its expiry without meeting mandatory criteria - As per CBL Regulations, renewal may be sought under Regulation 5 ibid with only difference that Regulation 4 ibid not to be applied** - Hence, conditions (a) to (h) of said Regulation 5 ibid ought to be fulfilled by CHA even at time of renewal thereof and conditions (d) and (e) thereof, relevant for present adjudication - **Non-renewal and revocation-two separate things under two distinct provisions of Regulation hence, assessee's plea of being vexed twice for same set of unsubstantiated allegations, not sustainable** - Order dated 2-2-2016 definitely instance of complaint of misconduct and presence of mens rea with assessee while committing alleged misconduct, recorded in said order - Commissioner of Customs committing no error while denying renewal of licence - No infirmity in Order under challenge and same upheld - Regulation 9(2) of Customs Broker Licensing Regulations, 2013.

Customs House Agent's Licence - 'Non-Renewal' and 'Revocation', two separate things under two distinct provisions of Customs Brokers Licensing Regulations, 2013.

29. K. PADMANABAN LOGISTICS PVT. LTD.

Versus

COMMR. OF CUS., CHENNAI-VIII

2018 (362) E.L.T. 916 (Tri. - Chennai)

IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI

Summary:

Customs Broker License - Suspension of - Double Jeopardy - **Legality of parallel action of suspension** under Regulation 19 of Customs Broker Licensing Regulations, 2013 by parent Customs Commissionerate when **order of prohibition under Regulation 23 of Customs Broker Licensing Regulations, 2013 issued by jurisdictional Customs Commissionerate of another Customs station - HELD** : Such simultaneous action for same act, omission or enquiry pending or contemplated at other Customs station, to amount to double jeopardy - Such action in effect to paralyze functioning of Customs Broker not only in Customs station where acts or omissions of Customs Broker are under scanner, but also in other customs stations and within parent Customs Commissionerate where Customs Broker not found in violation of CBLR, 2013 - **No necessity, justification and legality of order of suspension - Impugned order surely overkill and legally unsustainable, and hence set aside** - Regulation 19 of Customs Broker Licensing Regulations, 2013.

30. CONCORDE ZOOM

Versus

COMMISSIONER OF CUSTOMS (SEA), CHENNAI-VIII

2018 (362) E.L.T. 372 (Tri. - Chennai)

IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI

Summary:

Customs broker's licence - Prohibition of licence - Order for continuation of prohibition - Competent authority competent to prohibit Customs broker to function only at one or more sections of Customs station - Prohibition cannot be extended to all sections and all Customs Commissionerates in Customs station - **Prohibition envisaged in Regulation 23 of Customs Brokers Licensing Regulations, 2013 cannot allowed to be continued disabling of functioning of Customs broker, interminably, without following any principles of natural justice or any of procedures laid down elsewhere in said Regulations** - Continuation order passed four months after personal hearing granted to broker - Not proper - Proceedings stated to been initiated against broker as exporter failed appear, however order itself stating that representative of exporters appeared before Authority - Goods had been permitted to be provisionally released - Continuation of prohibition not alternative to following procedure laid down in 2013 Regulations - Order set aside. - *Regulation 23 is at best a stopgap action pending initiation of proceedings under other provisions of Customs Brokers Licensing Regulations, 2013. Even under Regulation 20 which provides for the highest degree of punishment that can be meted out to the broker, viz., revocation of the licence, even that can however be done after following a chain of procedures laid down in the Regulation. When the penal provisions in the Regulations can be actualized only by following laid down procedures and within prescribed out time limits.*

Appeal to Appellate Tribunal - Appeal from order for continuation of prohibition of Customs broker's licence - Order of prohibition gave an opportunity of personal hearing to broker - Merit in broker's contention that it awaited results of personal hearing to file appeal - Appeal against first order could be filed at this stage with application for condonation of delay which would have been considered as per procedure - Order of continuation of prohibition could not be said to have any independent existence and could be best construed as an addendum or a part and parcel of first order - Contention that appeal should have been filed against order of prohibition and not only on order of continuation of prohibition rejected - Section 129A of Customs Act, 1962.

31. BLESSING CARGO CARE PVT. LTD.

Versus

COMMISSIONER OF CUSTOMS, CHENNAI-VIII

2018 (361) E.L.T. 721 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Broker's Licence - Suspension of - Word 'computer' deliberately added to "description of goods" in Bill of entry at the behest of importer in violation of Section 46(4) of the Customs Act, 1962 with a view to claim duty exemption benefit - **Petitioner handling the very same consignments and effecting clearances for the very same importer through various Ports - Customs Broker under an obligation to advise his client regarding correct classification of goods, which has attained finality** - Catalogue/Technical specification sheet produced along with import documents through the petitioner before the customs not portrays the LED monitor as computer monitor - Thus, petitioner failed in his obligations contemplated under Regulation 11 of Customs Brokers Licensing Regulations, 2013 - **Suspension of license not perverse or arbitrary - Regulation 19(1) of Customs Brokers Licensing Regulations, 2013.**

Customs Broker Licence - Suspension of - Time limit - Order of suspension passed within 3 months of seizure of goods - Statement of Managing Director of petitioner as well as statement of authorised representative of importer recorded after seizure of goods and then order of suspension made - No inordinate or unexplained delay warranting the case to be taken out of the purview of a case for immediate suspension - Regulation 19(1) of Customs Brokers Licensing Regulations, 2013.

Note:

The case was Affirmed in 2019 (368) ELT A346 (Madras High Court).

32. CARGO CARE INTERNATIONAL

Versus

COMMISSIONER OF CUSTOMS, COCHIN

2018 (361) E.L.T. 559 (Ker.)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Summary:

Customs Broker Licence - Suspension of - Limitation - Requirement under Regulation 19(1) Customs Brokers Licensing Regulations, 2013 for issuance of notice in writing to broker within period of 90 days from date of receipt of offence report - **Regulation does not contain any further provision in event of its non-compliance - 90 days' period prescribed in Regulation 19(1) ibid, not one of limitation rendering further proceedings under Regulation invalid** - No merits in appeal against order of single judge declining to interfere with order of suspension while directing proceeding be completed within three months - Regulations 19 and 20 of Customs Broker Licensing Regulations, 2013.

33. CAPRICORN LOGISTICS PVT. LTD.

Versus

COMMISSIONER OF CUSTOMS, BANGALORE

2018 (360) E.L.T. 497 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Summary:

Customs Brokers - Prohibition from working - Natural justice - To secure immediate result and prohibit any continuation of illegal activities, Authorities vested with power to take immediate action under Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Operative portion of order showed that it was passed with immediate effect and until further orders - **Petitioner had opportunity to show cause and establish its innocence and compliance with Regulation before concerned authority itself - It also had adequate and efficacious remedy by way of appeal before Tribunal under Regulation 21 ibid - Plea regarding breach of natural justice could be raised before Tribunal - Manner in which shell companies created to show export of goods on fake documents leading to claim of drawbacks, prima facie shocks conscience of Court - Temporary ban for time being subject to further investigation and even permanent ban, if case was proved, did not call for interference by Constitutional Court - No interference called at this premature stage - Article 226 of Constitution of India.**

Writ Petition - Maintainability - **Actions of Department meant to prevent tax evasions and leakage of revenue and crimes in form of illegal duty drawbacks - Cannot be interfered with lightly or tinkered with on the anvil of breach of principles of natural justice - If done, very basis and foundation for invoking these principles would be set at naught - Court while exercising extraordinary jurisdiction should desist from doing so - Lenient and convenient tool of natural justice cannot be used to protect those who indulged in gross violation of Regulations and Rules resulting in evasion of tax and duties - Articles 226 of Constitution of India.**

34. NAVEDITA PRAKASH GAWADE

Versus

UNION OF INDIA

2018 (360) E.L.T. 81 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Summary:

Customs House Agent licence - Benefit whether can be extended to heirs of licence holder after his death - On issuing cancellation of licence, Tribunal's order deciding in favour of holder upheld by Supreme Court by vacating stay granted by it earlier - During pendency of appeal before Supreme Court, licence holder died and his heirs brought on record - **Benefit of CHA licence of deceased holder could not be extended to his heirs when he himself could not avail benefit of Tribunal's order - Heir has to comply with requirement of regulations for getting an independent licence** - High Court in its writ jurisdiction cannot displace regulations and direct licence to be revived which itself was not in operation - Regulations 7 and 10 of Customs Brokers Licensing Regulations, 2013.

Note:

The case was Affirmed in 2018 (360) ELT A37 (S.C.).

35. SURPASS FREIGHT FORWARDERS

Versus

COMMR. OF CUS. (IMPORT), CHENNAI

2017 (358) E.L.T. 726 (Tri. - Chennai)

IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI

Summary:

Customs House Agent's Licence - Revocation of - **Abetment in commitment of breach of law using various IECs of others and undervaluation of goods imported - HELD : Be that as it may as to involvement of appellant and commitment of the offence, the limitation prescribed by law cannot be given go by** - When Customs failed to adhere to the limitation, it lost its remedy under Regulation 20 of Customs Brokers Licensing Regulations, 2013 - **When the mandatory requirement of Regulation was paid scanty regard, the appellant is correct to plead that he is entitled to the benefit of principles relating to limitation laid down by judgment of Madras High Court in the case of A.M. Ahmed & Co.**

Customs House Agent's Licence - Revocation of - When offence report came to record on 7-11-2013, revocation of licence was made on 19-1-2015 and that too without a notice issued within the period stipulated by Regulation 20 of Customs Brokers Licensing Regulations, 2013 - Though the action under the Customs Broker Licensing Regulations, 2013 is without prejudice to consequence under Customs Act, 1962, but violation of principles of natural justice by a belated action of authority made its order fatal.

36. MAAKRUPA FORWARDERS PVT. LTD.

Versus

COMMISSIONER OF CUS. (G), MUMBAI

2017 (357) E.L.T. 1017 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

Summary:

Customs Broker License - Revocation of - Limitation - Delay in completing proceedings of revocation - Contravention of time limit prescribed in Customs Broker Licensing Regulations (CBLR), 2013 - **HELD : Instant case of exceptional delay as matter held up for 4 times that of specifically prescribed time limit of 270 days under CBLR, 2013** - Contravention of prescribed limit as per C.B.E. & C. Circular No. 9/2010-Cus., dated 8-4-2010 - Use of word 'shall' in Regulations has been interpreted by Courts as 'mandatory' and not 'directory', as consequence of inaction serious and also paves way to help corrupt officials - Data provided by Department under interim order in case of Lohia Travels & Cargo [2016 (331) E.L.T. 614 (Tri.)] showing not even in one case out of 15 cases, prescribed time limit has been followed and in many cases inquiry has not been completed for more than 5 years - **Infringement of fundamental right to work provided under Constitution due to failure to follow prescribed time limits - Delay in proceedings gives advantage to unscrupulous brokers on one hand whereas not guilty suffer for a long time - In both cases justice not delivered** - Appeal allowed on limitation without going into merits - Revoked license to be restored forthwith - Regulations 20(5) & 20(7) of Customs Broker Licensing Regulations, 2013.

Interpretation of statute - Customs Brokers Licensing Regulations, 2013 - Time limits prescribed under Regulations 20(1), 20(5) and 20(7) *ibid* mandatory in nature.

Stricture against Department - Delay in completing proceedings under CBLR, 2013 - Enquiries initiated in 2010-11 still pending in 2016 - Departmental officers have no respect to C.B.E. & C. Circulars or CBLR, 2013 prescribing time limit for completion of proceedings - Revenue taken 67 days in providing data of 15 cases of such delay and seeking further 8-12 months just to compile data of other such files - This shows reluctance in providing data for some reasons - This also shows lack of supervision and effort to adhere to time limit prescribed under law - Such serious issue needs immediate attention of C.B.E. & C. and Chief Commissioner of Customs.

37. SEA CORAL CLEARING & FORWARDING

Versus

COMMR. OF CUS., CHENNAI-VIII

2017 (345) E.L.T. 620 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Brokers Licence - Suspension of - Quoting of wrong regulation, i.e., Regulations 20 and 22 instead of Regulations 19 and 20 of Customs Brokers Licensing Regulations, 2013 immaterial, Commissioner being well within his jurisdiction to exercise all powers under the Regulations including power to suspend a Customs Broker Licence.

Customs Brokers Licence - Suspension of - Limitation - Offence report submitted by Central Intelligence Unit, JNCH, dated 23-12-2015 not communicated to respondent Commissioner till date and only order passed by Principal Commissioner, Mumbai dated 13-4-2016 referring to offence report communicated to him - **Order of suspension of Customs Brokers Licence not hit by limitation - Regulation 20 of Customs Brokers Licensing Regulations, 2013.**

Customs Brokers Licence - Suspension of - Enquiry against Customs Broker when pending, Commissioner having the discretion to invoke powers under Regulation 19 of Customs Brokers Licensing Regulations, 2013 to suspend the petitioner's licence - High Court not to interfere with exercise of such discretion.

Writ jurisdiction - Alternative remedy - Suspension of Customs Brokers Licence - Enquiry initiated against petitioner by Mumbai Customs and prohibitory order passed against him under Regulation 23 of Customs Brokers Licensing Regulations, 2013 and post-decisional hearing given - Suspension of licence by respondent based on prima facie case against petitioner to prevent further misuse of Customs Brokers Licence and that if allowed to operate it would be detrimental to interest of Revenue - Order passed by respondent is a speaking order, reasons assigned being cogent and no error attributable to such order of respondent - Writ jurisdiction not invocable - Regulation 19 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India. [*2016 (337) E.L.T. 54 (Cal.) relied on*].

38. MISHRA & MISHRA (AGENCIES) ENTERPRISES

Versus

UNION OF INDIA

2016 (341) E.L.T. 507 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Writ jurisdiction - Alternative remedy - Petition challenging order holding Customs House Agent guilty of violation of Regulation 13(a) of Customs House Agents Licensing Regulations, 2004 - Ex facie no illegality in order or any violation of principles of natural justice - **Order well-reasoned and passed after discussing evidence on record and after affording full opportunity to petitioner to explain/refute charges - Writ Court not sit in appeal over decision of authority or into question of sufficiency or otherwise of evidence on the basis whereof order had been passed** - Customs Act, 1962 complete code to seek redress - Customs broker/house agent aggrieved by any order passed by Commissioner of Customs may challenge such order by way of appeal under Section 129A of Customs Act, 1962 before Appellate Tribunal - Writ petition before High Court not maintainable irrespective of vast powers of High Court - Article 226 of Constitution of India - Section 26 of Customs Act, 1962 - Regulation 21 of Customs Brokers Licensing Regulations, 2013. - *Availability of an efficacious alternative remedy is not an absolute bar to the maintainability of a writ petition. The High Court, having regard to the facts of a case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective alternative remedy is available, the High Court would not normally exercise its writ jurisdiction. The High Court will require the aggrieved party to exhaust the alternative remedy before the Court intervenes by way of judicial review. When a statute is a complete code in itself on the concerned subject like the Customs Act and it provides a particular remedy before a particular forum, the aggrieved party must ordinarily exhaust such remedy before invoking the high prerogative writ jurisdiction of the High Court. This is a practice ordinarily followed by the Writ Courts. [2012 (278) E.L.T. 26 (S.C.), (1998) 8 SCC 1 relied on].*

Writ Jurisdiction - Alternative remedy - Writ petition can be dismissed on the ground of alternative remedy even after admission of petition. [(2008) 12 SCC 675 relied on].

39. BHASKAR LOGISTIC SERVICES PVT. LTD.

Versus

UNION OF INDIA

2016 (340) E.L.T. 17 (Pat.)

IN THE HIGH COURT OF JUDICATURE AT PATNA

Summary:

Customs Brokers Licence - Revocation thereof - Violation of Regulations - Procedure for revocation - **In instant case Executive Director of petitioner Customs Broker firm, facilitating clearance of goods to an importer on the basis of IEC of another person - Regulations 11(n) and 11(e) of Customs Brokers Licensing Regulations, 2013, clearly violated as no verification of antecedent, correctness of IEC, identity of client and functioning of client at given address using reliable and independent documents/data/information, carried out - Petitioner also failing to supervise his employee, for not exercising due diligence to ascertain correctness of actual importer and misdeclaring proper classification and valuation of imported goods -** Proper prescribed procedure followed in revoking licence inasmuch as show cause notice issued, enquiry held, personal hearing given and availed, hence no violation of natural justice also - Revocation of licence in separate proceedings in order, notwithstanding non-imposition of penalty on concerned person in confiscation proceedings under Customs Act, 1962 - Regulation 20 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

EXIM - Importer-Exporter Code No (IEC) - Necessity of - An importer/exporter must have a valid PAN based IEC issued to him by competent authority and he cannot make any import/export on IEC of others - Such IEC number also required to be mentioned in import/export documents and also to be intimated to Customs authorities.

Writ jurisdiction - **Exercise of - Alternative remedy, when not granted - When there exist a statutory alternative remedy of appeal, an aggrieved person may avail that if he wishes to question findings of fact after re-appreciation of evidence -** High Court would normally not re-appraise evidence and cannot, acting as an Appellate Authority, substitute its views in place of the findings/decision of an authority exercising quasi-judicial functions - However, in instant case since merits of case have been considered in dismissing writ petition, liberty to avail the alternative remedy, not grantable - Article 226 of Constitution of India.

Writ jurisdiction - Scope of - In writ jurisdiction, High Court only required to evaluate correctness of decision making process and not decision itself - Findings of fact arrived at by statutory competent authority should normally be not gone into unless same are perverse, without evidence or contrary to evidence - Article 226 of Constitution of India.

Strictures against petitioner - Incorrect statement in petition - Petitioner CHA firm making a wrong statement in Para 5 that its Executive Director resigned his post on 30-1-2013 whereas records show otherwise - Further, nothing on record to indicate that intimation in such cases as required under Regulation 17 of Customs Brokers Licensing Regulations, 2013, given to competent authority or not - Conduct of petitioner in making wrong statement deprecated - Article 226 of Constitution of India.

40. ADITYA GANGULY

Versus

UNION OF INDIA

2016 (337) E.L.T. 54 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs Brokers Licence - Suspension of - Misdeclaration of import goods - Immediate action - Petitioner pleading that since suspension of licence not taken place immediately on detection of case, same not tenable - Said plea of petitioner not acceptable - Suspension order issued on 5-4-2016 by referring to adjudication order dated 26-2-2016 received by licensing authority through a forwarding letter dated 17-3-2016 - **Since basis of suspension was adjudication order, it cannot be said that suspension was belated - Had suspension taken place prior to adjudication order on the basis of otherwise knowledge of licensing authority, then petitioner would have pleaded that suspension order is pre-judging Customs case against him** - Regulation 19 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Customs Brokers Licence - Suspension - Post decisional hearing - Time period - **While undoubtedly, time periods given in Customs Brokers Licensing Regulations should be adhered to, grant of post decisional hearing with a delay of a day or two from prescribed period of 15 days, not making order of suspension non est** - Such a minor delay not fatal to suspension order as statutory provisions not warranting strict adherence of time-limit - Regulation 19 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Customs Brokers Licence - Suspension - Contemplation of enquiry - Post decisional hearing not becoming mere formality on stating in suspension order that a further enquiry is contemplated - Every order of suspension must be intended to lead to possible revocation subject to reply of Customs Brokers during post decisional hearing - **Suspension of licence is not punishment but first step for ultimate punishment of revocation of licence** - Thus, scope of contemplation of enquiry is always there while suspending licence and it cannot be said that authorities have closed their mind - Regulation 19 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Writ jurisdiction - Alternative remedy - Suspension of Customs Brokers Licence - **Writ jurisdiction invocable only when alternative remedy is demonstrably inefficacious or action challenged is palpably without jurisdiction or is baseless or absolute breach of principles of natural justice** - In such case quality of challenge should be evident - Disputed questions of fact or averments of non-compliance of conditions can best be addressed in regular forum of appeal rather than in writ - Similarly breach of natural justice should be glaringly evident - Instant case none of aforesaid present - Licence issuing authority undoubtedly has jurisdiction to suspend licence - Suspension also not belated inasmuch as it was issued within reasonable period of receipt of adjudication order imposing penalty on Customs Broker for his role in misdeclaration of goods, thus also not baseless on facts - **Further since post decisional hearing is statutorily prescribed and also has been so granted, there is no violation of principles of natural justice** - Whether suspension was necessary or not could have been argued by petitioner during post decisional hearing and statutory appeal thereafter - Writ jurisdiction not invocable - Principal Commissioner directed to pass suitable orders within 15 days in case petitioner had participated in post decisional hearing - If petitioner has not chosen to participate in post decisional hearing, a suitable decision be taken without affording him any further opportunity - Petition dismissed with a cost of 3000

GM on petitioner - Regulation 19 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

41. COMMISSIONER OF CUSTOMS, KANDLA

Versus

SAARTHEE SHIPPING CO.

2016 (336) E.L.T. 303 (Guj.)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Summary:

Customs Brokers Licence - Suspension thereof - Continuation of suspension - Non-issuance of order within prescribed period - Effect of - Tribunal holding that period of 15 days from post-decisional hearing, mentioned in Regulation 19(2) of Customs Brokers Licensing Regulations, 2013 is mandatory for issuing suspension continuation order and non-issuance thereof within time would lead to automatic lapse of suspension order - Instant case, **Commissioner issuing suspension continuation order after more than five months of hearing without assigning any reason for such delay - Keeping question of law open, no interference required in Tribunal's order on facts of this case - However, department at liberty to take action against Customs Broker under Regulation 20 ibid as lapse of suspension does not debar action under this Regulation** - Regulations 19 and 20 of Customs Brokers Licensing Regulations, 2013.

Customs Brokers Licence - Suspension vis-a-vis revocation - Interpretation of Regulations 19 and 20 of Customs Broker Licensing Regulations, 2013 - In terms of these provisions, if suspension of licence under Regulation 19 ibid is allowed to continue then action for revocation and penalty under Regulation 20 ibid must be taken - However, there is nothing in aforesaid provisions to bar action for revocation/penalty even if suspension of licence is not allowed to be continued for some reason - **Similarly lapse of suspension for want of suspension continuation order, not debarring Department to take revocation/penal action against Customs Broker** - Regulations 19 and 20 of Customs Brokers Licensing Regulations, 2013.

42. SARO INTERNATIONAL FREIGHT SYSTEM

Versus

COMMR. OF CUS., CHENNAI-VIII

2016 (334) E.L.T. 289 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Brokers Licensing Regulations, 2013 - Regulation 20 - Scope of - It gives independent right to Commissioner to initiate action de hors enquiry under other Regulations and Customs Act, 1962 - **It contemplates timely action against erring brokers, in strict compliance with provisions - Department is empowered to levy penalty and revoke licence, which is extreme step curtailing right to carry on any trade or profession as guaranteed by Constitution - Object behind such provision is (a) truth must be culled out at earliest in interest of Customs Broker and Department, (b) unlawful activities must be curbed at earliest point by revoking licence, (c) unless time limit is prescribed, action would not be initiated.**

Customs Brokers Licensing Regulations, 2013 - Regulations 11 and 20 - **Prescription of time limit - "Shall" cannot be termed as "directory" as consequence of action is revocation of licence and it paves way for inaction by officials breeding corruption - Every act of breach by broker entitles Department to initiate proceedings from date of knowledge of offence - It is only if time limit is strictly followed, swift action can be initiated against Customs Brokers and authorities can also be made accountable.**

Customs Brokers Licensing Regulations, 2013 - Scope and nature of - **They are promulgated under Section 146(2) of Customs Act, 1962 - Licence to Customs Brokers is granted and their affairs regulated under these regulations, including revocation of licence - These regulations contemplate action against Customs broker de hors Customs Act, 1962 - Hence, these regulations cannot be treated as subordinate legislation.**

Customs Brokers - Suspension of licence - Time-limit for action - There is no statutory prescription that only working days have to be reckoned - Such interpretation is applicable only in cases where last date falls on holiday and time can be extended till the next working day and not otherwise - Regulations have not defined "offence report" and in absence thereof, time period has to be reckoned from date of knowledge of offence - Regulations 11 and 20 of Customs Brokers Licensing Regulations, 2013.

Customs Brokers - Suspension of licence - Time-limit for action - Show cause notice for revocation of licence - Issued after 90 days from date of order suspending licence and also report of investigating agency - **HELD** : Show cause notice was issued beyond statutory period prescribed in regulations - Hence, it was not sustainable - Regulations 11 and 20 of Customs Brokers Licensing Regulations, 2013.

Interpretation of statutes - Mandatory/Directory provision - Every implementing authority of any fiscal statute is only performing public duty - Hence, it cannot be said that provision is 'directory' just because its adherence is in nature of performance of public duty - Object of enactment in prescribing period for performance of such public duty, has to be considered.

Interpretation of statute - Scope of - **It must always give logical meaning to object of legislation - It must implement provisions rather than to defeat it - When statute prescribes thing to be done in particular manner, it must be performed in such manner.**

Interpretation of statutes - Mandatory/Directory provision - **It depends on object of enactment - Consequences of violating provision must not affect interest of other party and would defeat purpose of enactment.**

Interpretation of statutes - Time limits prescribed in subordinate legislation - **They can only be termed as directory.**

43. BURLEIGH INTERNATIONAL

Versus

COMMISSIONER OF CUS. (IMPORT OF GENERAL)

2016 (333) E.L.T. 9 (Del.)

IN THE HIGH COURT OF DELHI

Summary:

Customs Broker's licence - Suspension - Confirmation thereof - Limitation for issuing order - Whether mandatory - **Petitioner pleading that limitation of 15 days after hearing for issuing order of confirming the suspension, being mandatory, suspension liable for revocation for not issuing said order within stipulated time - Nothing in Regulations to indicate that said time limit of 15 days mandatory** - However, since order has not been passed even after five months of hearing, Commissioner directed to grant fresh hearing within two weeks and pass suitable order within next two weeks - Regulation 19(2) of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

44. UNITED CUSTOMS HOUSE AGENCY PVT. LTD.

Versus

UNION OF INDIA

2016 (332) E.L.T. 776 (Cal.)

IN THE HIGH COURT AT CALCUTTA

Summary:

Customs Broker's Licence - Prohibition from working as such - Powers to prohibit - Scope of - Said power under Regulation 23 of Customs Brokers Licensing Regulations, 2013, being an extraordinary power, to be exercised sparingly - Prohibition undertaken in Revenue's interest, must not be made permanent or indefinite - Action for suspension or revocation of licence to be undertaken thereafter without delay - Further, **in case of exigencies, prohibition order can be issued without prior show cause notice or hearing** - However, it must be preceded with immediate disclosure of reasons for such prohibition and post-decisional hearing - Instant case, **prohibition order having been issued several years back and no further action taken thereafter, set aside** - However, Revenue at liberty to undertake fresh appropriate action in terms of aforesaid directions - Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Customs Broker - Prohibition from working as such - Show Cause Notice, requirement of - Hearing - Post-decisional hearing - Natural justice - **Not necessary to issue a prior show cause notice or to grant hearing before issuing prohibition order against a Customs Broker - Myriad games that Customs Brokers along with importers and exporters play, may lead to exigency where immediate prohibition is necessary - Principles of natural justice only requiring that person on whom penalty of prohibition is imposed, is made known of shortcomings - On affording a post-prohibition hearing to Customs Broker, natural justice not violated** - Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Precedent order - Reason in order - **Reason in support of an order operate as precedent and not order itself - Order relied upon by assessee, not indicating any reason as to why a pre-decisional hearing required to be granted in every case, not applicable** - Article 226 of Constitution of India.

45. MASTERSTROKE FREIGHT FORWARDERS P. LTD.

Versus

C.C. (I), CHENNAI-I

2016 (332) E.L.T. 300 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Broker's Licence - Revocation of - Time limit for issuing show cause notice - Whether mandatory or directory - Petitioner's pleading that time limit prescribed in Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 is mandatory - **From settled law under numerous judgments, position emerging that, (i) any time limits prescribed in a subordinate legislation can only be termed as directory, (ii) a provision as to whether it is mandatory or directory would depend upon the object of the enactment, and (iii) consequences of violating the provision must not affect interest of other party and would defeat purpose of the enactment - Regulations, ibid, cannot be called subordinate legislation as said regulations contemplate action against Customs Broker de hors provisions of Customs Act, 1962 - Time limit for issuing show cause notice under these regulations cannot be called directory merely because its adherence is in nature of performance of a public duty** - Law that confers private right is mandatory - Object of prescribing time limit for performing public duty is important - Purpose of prescribing time limit is to curb smuggling of goods and as a result to cancel licences of brokers if they are involved - Settled law that, when a statute prescribes a thing to be done in a particular manner, it must be performed in such a manner - Said regulations not only contemplate action against erring brokers but also contemplate timely action - Department duty bound to initiate proceedings within 90 days from date of knowledge of offence - Use of word 'shall' in said regulation making prescribed time limit as mandatory - Show cause notices having been issued beyond stipulated period, liable to be set aside - Regulation 20 of Customs Brokers Licensing Regulations, 2013.

Show cause notice - Limitation - Computation of limitation - All show cause notices issued after 90 days from the date of knowledge of offence - Department pleading that said period beginning from date of receipt of offence period with exclusion of Saturdays, Sundays and national holidays and extension of time sought by petitioner - Aforesaid plea of department not acceptable - Statute not prescribing that only working days to be reckoned for computation of limitation period - Only if last date falling on a holiday, same is to be excluded - Further, Customs Brokers Licensing Regulations, 2013, nowhere defining 'offence report' - Thus limitation period begins from date of knowledge of offence as held in 2014 (309) E.L.T. 433 (Mad.) - Further, request by one of petitioners to keep matter in abeyance, pending appeal not amounting to waiver of limitation period - There is no waiver either express or by implication - Regulation 20 of Customs Brokers Licensing Regulations, 2013.

Customs Broker's Licence - Revocation - Condonation of delay in issuing show cause notice - Department relying on decision in 2008 (208) E.L.T. 162 (S.C.) contending that High Court has discretion to condone delay in issuing show cause notice in such cases - Said plea not legally tenable - Validity of period of limitation being mandatory, object of Customs Brokers Licensing Regulations, 2013 would be defeated if such an action is taken - Also, it would open a Pandora box - Regulation 20 of Customs Brokers Licensing Regulations, 2013.

Writ jurisdiction - Maintainability - Alternate remedy - Petitioners contending that show cause notices having been barred by law and issued without authority, writ jurisdiction

invocable, notwithstanding availability of alternate remedy - Settled law that challenges to show cause notice is not a bar for invoking writ jurisdiction - However four tests viz., (i) notice is issued without authority/jurisdiction, (ii) notice is issued beyond period prescribed by law, (iii) notice is issued with a prejudiced mind, and (iv) issuance of notice is itself an abuse of process of law, required to be satisfied - Instant cases, evident from show cause notices that authorities have already predetermined issue - Authority to issue show cause notice also questioned - In such a scenario, directing petitioners for availing alternate remedy would be a futile exercise - Writ petitions maintainable - Article 226 of Constitution of India.

46. CAPPITHAN AGENCIES

Versus

COMMISSIONER OF CUSTOMS, CHENNAI-VIII

2015 (326) E.L.T. 150 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Customs Brokers Licence - Prohibition from working as such - Order thereto challenged - Commissioner of Customs, Chennai continuing prohibition imposed on Customs Broker (CHA) for violation of Customs Brokers Licensing Regulations, 2013 even after passing of orders by licence issuing Commissioner imposing only a fine for alleged violation and not suspending or revoking licence - **Undisputed conclusion that CHA allowed unauthorized persons to handle Customs clearance work and indulged in unauthorized import of drugs and pharmaceuticals at Chennai - Clear violations of various provisions of aforesaid Regulations also established as CHA failed to properly advise clients and verify antecedents of importer** - Licence issuing Commissioner by imposing fine on CHA also confirming violations of provisions - This order accepted by CHA by paying fine - Continuation of prohibition sustained being within ambit of aforesaid Regulations read with C.B.E. & C. Circular No. 9/2010-Cus., dated 8-4-2010 - Petition dismissed - Regulation 23 of Customs Brokers Licensing Regulations, 2013 - Article 226 of Constitution of India.

Customs Brokers Licence - Duties and responsibilities of Customs Broker (CHA) - **Grant of licence to act as CHA has definite purpose and intent - Prime duty of CHA being facilitating import or export of goods in any Customs station for which his knowledge of Customs law and procedure is tested by conducting exams - His duty is to assist Department in scrutinizing various documents presented in import or export - Greater responsibility on CHA to ensure that he does not act as an Agent for carrying out illegal activities of unscrupulous persons - He should not be a cause for violation of law - CHA cannot be permitted to misuse his position by taking advantage of his access to the Department - Misuse of position by the CHA will have far reaching consequences in transaction of business by the customs officials - Article 226 of Constitution of India.**

47. CHANDRA CFS & TERMINAL OPERATORS P. LTD.

Versus

C.C., CHENNAI-VIII

2015 (326) E.L.T. 122 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Summary:

Container Freight Stations (CFS) - Suspension of licence - Removal of seized goods from custody - Natural justice - Post-decisional hearing - A container of seized prohibited goods entrusted to appellant CFS for safe custody, removed on bogus documents and in connivance of staff - **Licence of appellant suspended under Handling of Cargo in Customs Areas Regulations, 2009** - Appellant pleading that suspension order violating natural justice as no enquiry conducted or show cause notice issued or pre-decisional hearing given - **HELD : Apparent from records and facts of case that there is clear violation by appellant of various regulations of impugned Regulations** - Appellant also made a co-noticee for penalty in subsequent show cause notice issued by DRI for confiscation of seized goods, wherein in addition to violation of provisions of Customs Act, 1962, violations of Regulation ibid also brought out - Regulation 11 ibid empowering Commissioner for suspension of licence as immediate action for violation of Regulations by custodian where enquiry is either pending or even contemplated - Appellant's antecedents showing that he has been penalized earlier also on three occasions for their role in smuggling of goods and violation of Regulations ibid - Police arresting employees of appellant for connivance in removal of seized cargo - **Appellant also outsourcing security of CFS without obtaining permission from competent authorities - Apparently there are serious lapses on part of appellant which cannot be overlooked - All above circumstances warranting immediate suspension of licence and hence Commissioner's action in consonance with legal provisions - Further Commissioner did not bring the operation of appellant in a complete standstill but allowed appellant to continue to deal with pending cargo** - Clear intent of legislature for emergent action under Rule 11 ibid without offering pre-decisional hearing - Settled law that post-decisional hearing in such cases amounting to compliance of natural justice - While suspension is in order and sustained, Commissioner directed to complete investigation proceedings and pass orders in terms of impugned Regulations within three months without getting influenced by the observations made in this order - Regulations 11 and 12 of Handling of Cargo in Customs Areas Regulations, 2009.

Container Freight Stations (CFS) - Suspension of licence - **Removal of seized goods in custody in connivance of employees - Vicarious liability - Notwithstanding plea by appellant that he was not aware of illegal removal of the seized container from their CFS by its employees, he is vicariously liable - Appellant must be ready to take responsibility for acts done in course of employment by his employees.** Regulation 11 of Handling of Cargo in Customs Areas Regulations, 2009.

48. INTERNATIONAL CARGO AGENTS

Versus

COMMR. OF CUS. & S.T., BANGALORE

2014 (307) E.L.T. 378 (Tri. - Bang.)

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE

Summary:

Customs Brokers Licence suspended with forfeiture of security - Restoration of - Under Customs Brokers Licensing Regulations, 2013 (CBLR), there is no specific provision to provide security in such cases - Regulations 7, 8 and 9 ibid only cover grant of a new licence or renewal thereof - However, **these regulations require security to be available at all times with Government, and this is the only interpretation which would ensure that regulations are interpreted in letter and spirit** - Hence, where security becomes non-available for any purpose, it becomes necessary for Commissioner to obtain fresh security, and to determine it, only regulations available are CBLR, 2013 - **It cannot be said that CHA acquired privilege of continuing as CHA with same amount of security which was required as per old regulations because of Section 159A of Customs Act, 1962 - Security deposit is taken to ensure that CHA performs his function in accordance with regulations and Government has control over a certain amount for any omission/commission that may be made by him** - This amount has to be determined and Government may from time to time revise it - Hence, **requirement of CHA to deposit additional security and suspension of licence for failure to do so, was proper** - Fact that suspension order did not specify that CHA had to provide security deposit of ` 5 lakhs in accordance with CBLR, 2013, was immaterial as legal position required such deposit - Also, there was no estoppel against law.

Customs House Agents - Suspension of licence - For a prescribed period with forfeiture of security deposit - Suspension ordered before coming into force of Customs Brokers Licensing Regulations, 2013 - For restoration of their licence after coming into force of these regulations, CHA has to provide ` 5 lakhs security in accordance with them - **CHA plea that since their licence was issued under predecessor regulations and their security deposit has to be in accordance thereof, rejected.**

Customs Broker - Suspension of licence - Non-furnishing of additional security - When statute fixed specific amount, CHA cannot plead that not providing it would not prejudice department - What can be examined is whether security deposit is required to be made in accordance with regulation or not - Suspension of licence upheld under Regulation 19 of Customs Brokers Licensing Regulations, 2013.

Customs Brokers Licence suspended with forfeiture of security - Restoration of - It is not covered by Regulations 7, 8 and 9 of Customs Brokers Licensing Regulations, 2013, which prescribe cover grant of fresh licence for which prescribe fees, bond and security.

Hearing - Early hearing - Interim stage in proceedings for suspension of CHA licence - At this stage early hearing is usually not permissible as suspension is required to be followed by enquiry - However, early hearing allowed as impugned issue was legal and CHA found to have suffered punishment by suspension of their licence for one month and forfeiture of security deposit.

Departmental circulars - Clarification issued by C.B.E. & C. - In letter to Commissioner, with reference to specific case, after consideration of the issue - **It does not lose its validity just**

because it is internal correspondence - Its legality has to be considered - Also, just because C.B.E. & C. has clarified, it does not become correct principle to be followed by CESTAT, though it may be so for Commissioner - It was more so as assessee should not feel that CESTAT was prejudiced by clarification issued by C.B.E. & C.