
(2018) 06 CAL CK 0021

Calcutta High Court

Case No: Writ PetitionNo. 691 of 2017

Ota Falloons
Forwarders Pvt. Ltd.

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision: June 5, 2018

Acts Referred:

- Customs Act, 1962 - Section 124, 146

Hon'ble Judges: DEBANGSU BASAK, J

Bench: Single Bench

Advocate: R.K. Chowdhury, Protyush Chatterjee, K.K. Maiti, Aishwarya Rajyashree

Final Decision: Dismissed

Judgement

DEBANGSU BASAK, J.

The petitioner is aggrieved by an order in original dated November 22, 2017 passed by the Commissioner of Customs (Airport and Administration),

Customs House, Kolkata. The impugned order revokes the licence granted in favour of the petitioner on the finding that, the petitioner failed to

discharge his obligations under Regulation 11(n) of the Customs Brokers Licensing Regulations, 2013. The impugned order is appealable.

Learned Advocate for the petitioner submits that, notwithstanding the availability of a statutory appeal, the writ petition is maintainable, as the

impugned order was passed by a person, who had no jurisdiction to do so. The incidents alleged in the impugned order are of 2012. A proceeding was

initiated by the Directorate of Revenue Intelligence, Ludhiana through a show-cause notice dated January 9, 2014 under Section 124 of the Customs

Act, 1962. Such show-cause was adjudicated by the Additional Commissioner of Customs, Ludhiana, and an order in original dated February 27, 2015

was passed. A penalty of Rs.1,00,000/- was imposed upon the petitioner, under Section 124 of the Act of 1962. The adjudicating authority did not find

any violation of Customs House Agents Licensing Regulations, 2004. The petitioner preferred an appeal to the Commissioner of Customs (Appeal) on

April 16, 2015. The petitioner received a show-cause notice dated June 23, 2017 under Customs House Agents Licensing Regulations, 2004. The

petitioner replied thereto. Learned Advocate for the petitioner submits that, Regulation 22 of the Customs House Agents Licensing Regulations, 2004

prescribes a time limit of 90 days for the initiation of proceedings thereunder from the date of receipt of the offence report. In the present case, the

alleged offence having taken place in 2012, a proceeding under the Regulations of 2004 in view of Regulation 22 thereof, is barred by limitation.

The issue of limitation is an issue of jurisdiction. A writ petition on such an issue is maintainable. He relies upon 2017 (355) Excise Law Times page 30

(Cal) (Indo-Foreign (Agent) Pvt. Ltd. v. Union of India) in support of his contentions. In support of the contention that, the show-cause notice dated

June 23, 2017 is barred by limitation, learned Advocate for the petitioner relies upon 2015 (322) Excise Law Times page 170 (Madras) (Sanco Trans

Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai), 2016 (337) Excise Law Times page 39 (Commissioner of Customs (General) v. S.K.

Logistics), 2016 (337) Excise Law Times page 41 (Del.) Indair Carrier Pvt. Ltd. v. Commissioner of Customs (General)) and 2016 (340) Excise Law

Times page 119 (Del.) (Overseas Air Cargo Services v. Commissioner of Customs (General), New Delhi).

Learned Advocate for the petitioner refers to the show-cause notice as also the impugned order, without prejudice to the point of limitation raised. He

submits that, it would appear from the impugned show-cause notice and the impugned order that, the adjudicating authority travelled beyond the show-

cause notice in imposing the penalty as done. Referring to the impugned order, learned Advocate for the petitioner submits that, the impugned order

invokes the provisions of the Customs Brokers Licensing Regulations, 2013. The show-cause notice having been initiated under the provisions of the

Customs House Agents Licensing Regulations, 2004, the adjudicating authority misconducted the proceedings in invoking the provisions of the

Customs Brokers Licensing Regulations, 2013 to impose the punishment. He submits that, the authorities did not follow the procedure prescribed either

under the Customs House Agents Licensing Regulations, 2004 or under the Customs Brokers Licensing Regulations, 2013, while dealing with the

show-cause notice and the reply thereto, and in fact, invoked the jurisdiction under two separate Regulations. Both cannot run parallelly in respect of

the same offence. Consequently, he submits that, the impugned order stands vitiated, and the impugned order should be set aside.

Learned Advocate for the respondents submits that, the provisions of the Customs House Agents Licensing Regulations, 2004 were invoked, and in

fact, the same was invoked at the final hearing stage also, although it was the petitioner who repeatedly applied to be tried under the provisions of the

Customs Brokers Licensing Regulations, 2013. He submits that, quoting of a wrong section, without any prejudice being caused to a party, does not

ipso facto, vitiate the order. In support of such contention he relies upon 1996 (82) Excise Law Times page 441 (SC) (Collector of Central Excise,

Calcutta v. Pradyumna Steel Ltd.) and 1978 (2) Excise Law Times page J 399 (SC) (N.B. Sanjana, Assistant Collector of Central Excise, Bombay &

Ors. v. The Elphinstone Spinning & Weaving Mills Co. Ltd.). He submits that, Regulation 22 of the Customs House Agents Licensing Regulations,

2004 and the Regulation 20 of the Customs Brokers Licensing Regulations, 2013 are similar to the extent that, it requires the authorities to initiate the

proceedings within the time specified from the date of receipt of the offence report. In the present case, the petitioner suffered proceedings initiated at

the instance of the Directorate of Revenue Intelligence, Ludhiana. The authorities in Kolkata who initiated the proceedings under the Customs House

Agents Licensing Regulations, 2004, did not have any knowledge of such proceedings pending against the petitioner.

In any event, the time period specified in the Customs House Agents Licensing Regulations, 2004 and in the Customs Brokers Licensing Regulations,

2013 are directory rather than mandatory. In support of such contention, he relies upon 2017 Volume 2 West Bengal Law Reporter page 221 (M/s.

Asian Freight (Unit of Esan Freight & Travel Pvt. Ltd.) & Anr. v. The Principal Commissioner of Customs (Airport & Administration), Customs

House & Anr.) and 2018 Supreme Court Cases Online (Bom) page 753 (The Principal Commissioner of Customs (General) Mumbai v. Unison

Clearing Pvt.

Ltd.). He contends, relying upon 2016 (337) Excise Law Times page 54 (Aditya Ganguly v. Union of India) that, the adjudicating order can be treated

as the offence report. Therefore, according to him, the authorities have acted within the time specified and that, there is no irregular exercise of

jurisdiction by any authority in issuing the showcause notice or imposing the penalty as sought to be done. The issues that arise for consideration, are

as follows:-

(i) Is a writ petition challenging an order in original on the ground of lack of jurisdiction maintainable, despite the availability of statutory alternative

remedy?

(ii) Are the time limits prescribed in Regulation 22 of the Regulations of 2004 and Regulation 20 of the Regulations of 2013 mandatory or directory?

(iii) Is the show-cause notice dated June 23, 2017 barred by limitation?

(iv) If the answer to the third issue is in the affirmative, is the impugned order in original vitiated due to lack of jurisdiction?

(v) Does citing the Regulations of 2013 in the impugned order vitiate it?

(vi) To what relief or reliefs are the parties entitled to?

The petitioner was a Custom House Clearing Agent. The petitioner was involved in the export of materials covered under the Shipping Bill No. 1076

dated December 24, 2012. On specific information received by the Directorate of Revenue Intelligence, that, Red Sanders (prohibited goods for

export) were attempted to be smuggled in the guise of scaffolding materials, an inspection was carried out. On examination of the containers, the

Custom authorities found that, Red Sanders logs of different size and shapes, in the containers covered under the shipping bill involving the petitioner.

The petitioner was acting as the Clearing House Agent for M/s. Uttam Scaffolds, Mohali in respect of such transaction. The Directorate of Revenue

Intelligence issued a showcause notice dated January 9, 2014 to the petitioner proposing to impose penalty. The show-cause notice was adjudicated

upon. An order in original dated October 27, 2015 was passed which imposed a penalty upon the petitioner. The petitioner preferred an appeal before

the Commissioner of Customs (Appeal). Thereafter, the respondent no. 2 issued the impugned show-cause notice on June 23, 2017. The petitioner

raised the contention of limitation before the adjudicating authority. By the impugned order dated November 22, 2017, such contention was rejected.

Indair Carrier Pvt. Ltd. (supra) is of the view that, an issue of limitation is an issue of jurisdiction and can be raised in a writ jurisdiction despite the

availability of a statutory alternative remedy. It remands the matter to the adjudicating authority for consideration on the point of limitation. The writ

petition raises issues with regard to limitation. Such issues are required to be considered. The first issue is answered accordingly.

Two Regulations are relevant for consideration of the issue of limitation raised, in the facts of the present case. The show-cause notice was issued to

the petitioner by invoking the provisions of the Customs House Agents Licensing Regulations, 2004. The impugned order relies upon the Customs

Brokers Licensing Regulations, 2013 apart from the Regulation of 2004. Both the two Regulations specify time limits for the purpose of executing the

various steps enumerated therein. The relevant Regulations of the Regulations of 2004 are Regulations 20 and 22 which are as follows:-

â€œ20. Suspension or revocation of licence.-

(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for

forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of

Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which in the opinion of the

Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is

necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where

an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs

may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended

and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of

hearing granted to the Customs House Agent.â€■

â€œ22. Procedure for suspending or revoking licence under Regulation 20.-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence

report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty

days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to

specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or

Assistant Commissioner of Customs. Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in

subregulation (2) to regulation 20.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been

received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant

Commissioner of Customs to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence

and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may

also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings,

and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his

evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry

recording his findings and submit his report within ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or

Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than thirty days,

any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House

Agent, pass such orders as he deems fit within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or

Assistant Commissioner of Customs, under sub-regulation (5).

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an

appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section

129 of the Act.â€■

The relevant Regulation under the Customs Brokers Licensing Regulations, 2013 is Regulation 20 which is as follows:- â€œ20. Procedure for revoking

licence or imposing penalty.-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an

offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within

thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also

to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or

Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received

within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of

Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such

documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the

proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the

correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and

where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence

is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a

report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under

sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant

Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty

days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker,

pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not

exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of

Customs or Assistant Commissioner of Customs, under sub-regulation (5) : Provided that no order for revoking the license shall be passed unless an

opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.â€ Regulation 20 of the Regulations 2004 deals

with suspension and revocation of licence. Regulation 22 of the Regulations of 2004 Â deals with procedure for suspending or revoking the licence

under the Regulation 20. Sub-Regulation 1 of Regulation 20 of the Regulations of 2004 require the Commissioner of Customs to issue a notice to the

Customs House Agent, within 90 days from the date of receipt of the offence report, stating the grounds on which it is proposed to suspend or revoke

the licence. It goes on to allow the Customs House Agent an opportunity, to submit a written statement of defence, and a right of personal hearing, if

so demanded by the Customs House Agent.

Regulation 20 of the Regulations of 2013 also requires the Commissioner of Customs, to issue a notice to the Customs Brokers within a period of 90

days, from the date of receipt of the offence report. The Regulations of 2013 were not invoked when the show-cause notice to the petitioner was

issued as apparently, the offence committed was during the period covered under the Regulations of 2004. The showcause was issued under the

provisions of the Regulations of 2004. Madras and the Delhi High Courts are of the view that, the time period stipulated in Regulation 22 of the

Regulations of 2004 and Regulation 20 of the Regulations of 2013 are mandatory and not directory. Such view of the Delhi High Court is expressed in

S.K. Logistics (supra), Indair Carrier Pvt. Ltd. (supra) and Overseas Air Cargo Services (supra). The view of the Madras High Court finds place in

Sanco Trans Ltd. (supra). Our High Court in M/s. Asian Freight (Unit of Esan Freight & Travel Pvt. Ltd.) & Anr. (supra) considers three other

authorities of the Madras High Court which are of the same view as to the mandatory nature of the time period specified in Regulation 22 of the

Regulations of 2004 as that of Sanco Trans Ltd. (supra). While dealing with such authorities in context of the issue whether the limit period specified

is mandatory or directory, M/s. Asian Freight (Unit of Esan Freight & Travel Pvt. Ltd.) & Anr. (supra) makes the following observations:-

“40. The reported decisions of the Madras High Court cited by Mr. Saraf do advance his cause. However, both on facts as well as in law, this

Bench is persuaded to take a different view of the matter.

41. It is settled by a catena of decisions rendered by the Supreme Court, while considering varying statutes, that when a public functionary is required

by a statute to do or perform a certain thing or activity within a specified time, the same is ordinarily directory; however, if the consequence for

inaction on the part of the statutory authority within such specified time is expressly provided in the statute, it must be held to be imperative. Reference

may be made in this connection to the decisions reported in (2007) 8 SCC 705 (Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals

Limited), (2006) 5 SCC 702 (Kuldeep Singh v. Govt. of NCT of Delhi), (2005) 6 SCC 776 (Punjab State Electricity Board Ltd. v. Zora Singh), (2003)

8 SCC 498 (P.T. Rajan v. T.P.M. Sahir), (2003) 3 SCC 433 (Balwant Singh v. Anand Kumar Sharma), (2003) 2 SCC 577 (Nasiruddin v. Sita Ram

Agarwal), (2003) 2 SCC 111 [Bhavnagar University v. Palitana Sugar Mill (P) Ltd.], (1984) 2 SCC 486 (Dalchand v. Municipal Corporation, Bhopal),

and AIR 1968 SC 224 (Remington Rand of India Ltd. v. Workmen).

42. A passage from the decision in Dalchand (supra) [the Bench comprised of one learned judge, at it appears from the report] is very instructive,

reading as follows:

1. *** There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is

important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of

holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is

mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision

literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to noncompliance of

the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which

appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The

negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public

inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is

not the prescription of a period of limitation with painful consequences if the act is not done within that period. ***

43. Looking to the object of the statute in question (the 2013 Regulations read with the Customs Act) and its broad purpose, and on weighing the

consequence that would ensue if the time-limit in regulation 20(1) for issuance of show notice were held mandatory instead of holding it to be

directory, it is well-nigh difficult to conclude that unless revocation proceedings are initiated within ninety days of receipt of an offence report, the

principal commissioner or the commissioner of customs, as the case may be, would stand denuded of the power to proceed in that direction. This

Bench is of the opinion that the time-limit that has been prescribed serves a dual purpose. First, it acts as a check on the public functionary vested with

the power to initiate revocation proceedings not to keep the issue pending ad infinitum; if proceedings are not initiated within the 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 is intended to guarantee protection to a customs broker of not being proceeded against on the basis of stale charges. But to

hold that in every case where revocation proceedings are not initiated within the time-limit in regulation 20(1) a customs broker may get away, is too

farfetched a construction and is unacceptable. What is important is that regulation 20 does not provide for any consequence, should proceedings be not

initiated within ninety days of receipt of an offence report. One may in this connection note section 110(2) of the Customs Act ordaining that where

any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of

the goods, the goods shall be returned to the person from whose possession they were seized. It is axiomatic that upon a failure to give notice as

contemplated in section 124(a) within six months of seizure, the consequence would follow i.e. the seized goods have to be returned. If any authority is

required on the point, reference may usefully be made to the decision reported in 100 C.W.N. 429 (India Sales International v. Collector of Customs).

Similar such consequence being clearly absent in regulation 20(1), the time-limit has to be construed as directory and not mandatory.

44. It is now time to consider the three Madras High Court decisions. In A.M. Ahamed (supra), regulation 22 of the 2004 Regulations was under

consideration. Finding that separate time frames were provided in the various sub-regulations of regulation 22 to regulate the proceedings from its

commencement till its conclusion, the learned Judge was of the view that the show cause notice ought to have been issued within ninety days.

Significantly, in paragraph 25 of the decision it is recorded that the respondents did neither contend that the time limit of ninety days was directory and

not mandatory, nor that the time limit need not be strictly adhered to. Considering all such aspects, the learned Judge upheld the contention raised and

set aside the impugned notice.

45. Masterstroke Freight (supra) and Saro International Freight System (supra) were decided by the same learned Judge. The former decision was

followed in the latter. With respect, the learned Judge appears to have taken a too narrow legalistic view on the basis of certain decisions of the

Supreme Court laying down the law that when a statute requires a thing to be done in a particular manner, it must be performed in such a manner or

not at all. The learned Judge also construed 'shall' in regulation 20(1) as mandatory and not directory.

46. The learned Judge in *Masterstroke Freight (supra)* and *Saro International Freight System (supra)* further expressed the view that if timely action is

not taken under regulation 20, that ""would also pave way for inaction by the officials breeding corruption"". Yes, indeed, but viewed from a different

angle one cannot ignore the ground realities. If an unscrupulous broker commits an act that makes it liable to be proceeded against under regulation 18

read with regulation 20, it may well get away by adopting illegal means. All officers are not honest and if too strict a view is taken on the aspect of

time-limit mentioned in regulation 20(1), the same instead of suppressing the mischief would have the potential of promoting illegal activities. This

Bench is persuaded to take this view bearing in mind the illuminating observations in *Dalchand (supra)*.

47. Interestingly, the decision of the Supreme Court reported in AIR 1980 SC 303 (*Sharif-ud-din v. Abdul Gani Lone*) was noticed by the learned

Judge while authoring both the decisions and a passage therefrom is found to be quoted in the same. The last sentence from the quoted passage is

relevant and reads thus:

Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said

requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should

not follow.

48. The learned Judge also quoted a paragraph from a decision of the Madras High Court itself reported in 2015 (318) E.L.T. 83 (Mad.) (*Hyundai*

Motors India Ltd. v. Union of India), wherein the learned Judge observed:

Another simple test to determine whether a time limit stipulated in a rule is directory or mandatory, is to see whether there is any indication in the

Rule itself about the consequences of non compliance with the same. If a statutory provision contains a prescription and also stipulates the

consequences of non compliance with the condition, it would normally be taken to be mandatory. If the consequences of non compliance are not

indicated, then, the provision has to be seen only as directory.

49. What follows from the above is that a consequence of not doing a particular act, if provided in the statute, would in most cases be determinative.

Viewed in the light thereof, the relevant regulation (regulation 20) not providing for any consequence that might necessarily follow in favour of a

customs broker should any of the acts envisaged therein be not performed within the specific time frame provided therefor, has to be construed as

directory.

50. The same view appears to have been taken in the Division Bench decision of this Court in Md. Yeasin (supra), relied on by Mr. Saraf. Clause 21

of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 requiring completion of proceedings within three months from

date of service of notice asking for explanation from the delinquent dealer, was held not to be mandatory on a survey of various authorities by Hon'ble

Asok Kumar Ganguly, J. (as His Lordship then was) speaking for the Division Bench. Paragraph 25 of the decision being important, is reproduced

below:

25. But the provision is silent as to what will happen if the proceedings are not completed within a period of 3 months. It is well-settled that where a

statute provides for consequences for non-compliance with a time-limit, in such cases it has been held that the time fixed is mandatory in character.

The relevant provision of Clause 21 does not disclose any such intention. This is a feature which inclines the Court to hold the time of 3 months is not

mandatory.

51. This Bench thus doubts as to whether the three decisions of the Madras High Court relied on by Mr. Saraf lay down correct law, and holds the

time limit in regulation 20(1) as not mandatory, and that any proceeding for revocation of a customs broker's license beyond ninety days of receipt of

offence report would not per se stand invalidated by mere reason of such belated initiation.â€ S.K. Logistics (supra) considers the conduct of the

Inquiry Officer pursuant to the show-cause notice and is of the view that, the department did not explain the delay in not adhering to the time period of

90 days stipulated in Regulation 22(5) of the Regulations of 2004. Overseas Air Cargo Services (supra) notices Indair Carrier Pvt. Ltd. (supra) and is

of the view that, the time limits prescribed in the Regulations of 2004 for the issuance of show-cause notice and completion of enquiry within 90 days

from the issuance of show-cause notice are sacrosanct. It, however, does not consider any of the Supreme Court decisions cited in M/s. Asian Freight

(Unit of Esan Freight & Travel Pvt. Ltd.) & Anr. (supra).

Regulations of 2004 as well as the Regulations of 2013 are products of exercise of powers under Section 146 of the Customs Act, 1962. Both the

Regulations regulate the affairs of a Customs House Agent, subsequently known as the Customs Agent in the Regulations of 2013. Regulation 22 of

the Regulations of 2004 and Regulation 20 of the Regulation 2013 deal with the power to revoke a licence granted. Both the Regulations stipulate time

limits. None of the Regulations, however, provide for the consequence of not adhering to the time limit prescribed. The consequence of non-adherence

to the time limit being not provided for in either of the two Regulations, it is open to an interpretation that, the time limits prescribed are not mandatory.

While interpreting a statute when it provides for a time limit for doing a certain act, then, the entire statute is required to be considered, in the context

of the object that the statute seeks to achieve. A statutory provision prescribing a time limit without providing for the consequence of non-adherence

can be interpreted to mean that, the time limit provided is directory and not mandatory. Regulation 22 of the Regulations of 2004 and Regulation 20 of

the Regulations of 2013 are provisions for the purpose of checking unwholesome practices at the instance of a Customs House Agent or a Customs

Agent as the case may be.

These are provisions which empower the authority to revoke the licence granted as a measure of punishment for a wrongdoing of the licensed person.

Any licence granted unless coupled with a grant or interest, is revocable. These provisions provide for the procedure for the revocation of the licence

granted. These provisions seek to regulate the affairs of the licensed persons, so that, such licensed persons obeys the grant of licence in true spirit, on

the pain of cancellation of the licence upon being found to have transgressed its parameters. The licence granted under the Regulations of 2004 or

2013 cannot be said to be coupled with any grant or interest making it irrevocable. Such is not the contentions of the petitioner.

M/s. Asian Freight (Unit of Esan Freight & Travel Pvt. Ltd.) & Anr. (supra) went into the question whether the provisions are mandatory or directory

and arrives at a finding that, the time limit in Regulation 20 of the Regulations of 2013 is not mandatory and that, any proceeding for revocation of

Customs House Agents' licence beyond ninety days of receipt of the offence report would not per se stand invalidated by mere reason of such

belated initiation. The Division Bench of the Bombay High Court in Unison Clearing Pvt. Ltd. (supra) considers the issue whether the timeframe

prescribed in Regulation 20 of the Regulation of 2013 is mandatory or directory. It holds that, the time limit contained in Regulation 20 of the

Regulations of 2013 cannot be construed to be mandatory but directory. It goes on to say that, the timeline framed in the Regulation need to be rigidly

applied, fairness would demand that, when such time limit is crossed, the period subsequently consumed for completing the enquiry, should be justified

by giving reasons, and the causes on account of which the time limit was not adhered.

M/s. Asian Freight (Unit of Esan Freight & Travel Pvt. Ltd.) &

Anr. (supra) is of a coordinate bench. I find no reason to arrive at a different finding than that of M/s. Asian Freight (Unit of Esan Freight & Travel

Pvt. Ltd.) & Anr. (supra) when it holds that, the time limit of Regulation 20 of the Regulation of 2013 is not mandatory. On a parity of the same

reasoning Regulation 22 of the Regulations of 2004 is not mandatory, but directory. The second issue is answered accordingly.

As noted above, the Commissioner of Customs was required to issue a notice within 90 days from the date of receipt of the offence report, in terms of

Regulation 22 of the Regulations of 2004. In the present case, the Directorate of Revenue Intelligence, Ludhiana was in seisin of the matter, and was

investigating into the concerned shipment. It passed an adjudicating order dated February 27, 2015 after having issued a show-cause notice dated

January 9, 2014. Nothing is placed on record to suggest that, the respondent no. 2 was aware of the proceedings undertaken by the Directorate of

Revenue Intelligence, Ludhiana. At paragraph 10 of the writ petition, the petitioner claims that, such show-cause notice "must be marked"™ to the

respondent no. 2 and the receipt, therefore, cannot be denied by the respondents. It is for the petitioner to prove that, the respondent no. 2 was aware

of the showcause notice dated January 9, 2014 to have it considered as an offence report. The averments in paragraph 10 of the writ petition are

based on a surmise, and at best can be said to be speculative.

There are not positive averments from the petitioner, with cogent evidence to back such statements that, the respondent no. 2 was aware of the

showcause notice dated January 9, 2014 issued by the Directorate of Revenue Intelligence, Ludhiana to the petitioner, prior to the date as noted in the

impugned order. On the contrary, the show-cause notice dated January 9, 2014 was not marked to the respondent no. 2 as would appear from the

records produced on behalf of the respondent no. 2, being a photocopy of such show-cause notice. The respondent no. 2 became aware of the

misdeeds of the petitioner upon receipt of the order of original passed by the Directorate of Revenue Intelligence, Ludhiana dated February 27, 2015.

This is the finding in the impugned order.

The point of limitation was considered in the impugned order. The impugned order finds that, the respondent no. 2 received the order in original dated

February 27, 2015 on March 27, 2017. It proceeds to treat the order in original dated February 27, 2015 as the offence report. It notes that, there was

an order of suspension issued on April 5, 2017 with an opportunity of post suspensional hearing provided on April 11, 2017 and the order of suspension

being revoked on May 2, 2017. It also notes that, proceeding under Regulation 20 of the Regulations of 2004 was initiated by issuance of the show-

cause notice on June 23, 2017. It records the submission of the report of the Inquiry Officer on September 19, 2017 and the adjudicating authority

providing an opportunity of personal hearing on November 9, 2017.

There are two aspects to the contention of procedural irregularity vitiating the impugned order, as contended on behalf of the petitioner. One aspect is

the investigation not being commenced within the stipulated period of 90 days from the date of the receipt of the offence report, and the other is that,

the procedure and time limits engrafted in the Regulations of 2004 or the Regulations of 2013 not being followed. The words "offence report" is

not defined in either the Regulations of 2004 or the Regulations of 2013. Nothing is placed on behalf of the petitioner to suggest otherwise. The

authority must have a report before it to arrive at a prima facie finding that, a Customs House Agent governed under the Regulations of 2004 or

Regulations of 2013 is guilty of such a misdemeanor, that it warrants invocation of the Regulations of 2004 or Regulations of 2013, as the case may be,

for further investigation and appropriate action. Such a report is to be treated as an offence report within the meaning of the Regulations of 2004 or

the Regulations of 2013, as the case may be. The prescribed time period of 90 days would, therefore, commence from the date of receipt of such a

report. In a given case, the order in original in any adjudicating proceeding can be treated as the offence report. It is so recognized in Aditya Ganguly

(supra).

Aditya Ganguly (supra) is a case relating to a Customs Broker. It notes that, Customs Brokers were known as Customs House Agent under the

Regulations of 2004. It concerns proceedings initiated under the Regulations of 2013. In that case, an order of suspension issued in exercise of powers

under the Regulations of 2013 was under challenge. The order of suspension was premised upon an order in original. In the facts of that case, the

challenge to the order of suspension issued under the Regulations of 2013 failed. An order in original, can in given facts of a case, be considered to be

an offence report. Neither Regulation 22 of the Regulations of 2004 nor Regulation 20 of the Regulations of 2013, excludes an order in original, from

the purview of being considered as an offence report. In the present case, the order in original, treated as an offence report, is not one which was

issued by an adjudicating authority exercising jurisdiction under the Regulations of 2004. Therefore, I find no infirmity in the authority treating the order

in original dated February 25, 2015 as the offence report under Regulation 22 of the Regulations of 2004. The fact that, the order in original dated

February 25, 2015 was received by the authority concerned, invoking the provisions of the Regulations of 2004 on March 27, 2017, is not disputed on

behalf of the petitioner. Nothing to the contrary is established by the petitioner. The show-cause notice under the Regulations of 2004 was issued on

June 23, 2017. The impugned show-cause notice is, therefore, within the period of 90 days from the date of receipt of the order in original dated

February 25, 2015, and the same can be considered as the offence report for the purposes of Regulation 22 of the Regulations of 2004, in the facts of

the present case.

Consequently, in the facts of the present case, the show-cause notice issued on June 23, 2017 cannot be said to be barred by limitation. The show-

cause notice being within limitation, the authority acted within jurisdiction in issuing it and adjudicating thereon. The impugned order does not suffer for

lack of jurisdiction. The third and the fourth issues are answered accordingly. The show-cause notice dated June 23, 2017 was issued under the

Regulations of 2004. The impugned order in original dated November 22, 2017 purports to notice the Regulations of 2013 and arrives at a finding that,

the petitioner violated the provisions of Regulation 11(n) of the Regulations of 2013. It proceeds to revoke the licence granted to the petitioner and

forfeits the security deposit furnished by it. Regulation 11 of the Regulations of 2013 lays down the obligations of a Customs Broker. Regulation 11(n)

of the Regulations of 2013 requires a Customs Broker to verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client

and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The Regulations of 2004

enumerates the obligation of a Customs House Agent in Regulation 13 thereof. Regulation 13(o) of the Regulation of 2004 contains the same

provisions as that of Regulation 11(n) of the Regulations of 2013.

In *The Elphinstone Spinning* (supra) the Supreme Court is of the view that, if the authorities have the power to issue a notice, the fact that, the notice

refers specifically to a particular rule, which may not be applicable, will not make the notice invalid. Similar view is expressed by the Supreme Court in

Pradyumna Steel Ltd. (supra) where it holds that, mere mention of a wrong provision of law when the power exercised is available, even though under

a different provision, is by itself not sufficient to invalidate the exercise of that power. In the facts of the present case, the petitioner invited the

authorities to invoke the provisions of the Regulations of 2013 at the time of hearing, despite the notice to show-cause being issued under the

provisions of the Regulations of 2004. It should not be allowed to approbate and reprobate on the applicability of the Regulations. Be that as it may, the

authorities did have the power to pass the impugned order in the manner and to the extent as done, under the provisions of Regulations 2004 as well as

under 2013. The impugned order refers to Regulation 11(n) of the Regulations of 2013.

The same provision is there in Regulation 13(o) of the Regulations of 2004. It is not substantiated on behalf of the petitioner that, the quoting of

Regulation 11(n) of the Regulations of 2013 caused any prejudice to the petitioner. The finding that, the petitioner is guilty of violation of Regulation

11(n) of the Regulations of 2013 has not been substantiated to be perverse. The petitioner does not contend that, the quantum of punishment imposed

is disproportionate to the offence committed. On the same facts, the authorities could have awarded the same punishment for violating Regulation

13(o) of the Regulations of 2004. The notification dated June 21, 2013 notifying the Regulations of 2013, in its opening paragraph states that, the

Regulations of 2004 stands superseded "except as respect things done or omitted to be done before such supersession."

The show-cause notice was issued under the Regulations of 2004. Notwithstanding the claim of the petitioner before the adjudicating authority that,

the proceeding should be governed by the Regulations of 2013, the proceeding is one under the Regulations of 2004 and should be deemed to have

been concluded thereunder. In fact, the writing communicating the impugned order specifies that, the impugned order is appealable under Regulations

of 2004. The impugned order does not stand vitiated in the manner as contended by the petitioner or otherwise. The fifth issue is answered

accordingly. In such circumstances, there is not merit in the present writ petition. W.P. No. 691 of 2017 is dismissed. No order as to costs.