IN THE HIGH COURT OF MADRAS

CMA No.3 of 2020
CMP No.141 of 2020

PRINCIPAL COMMISSIONER OF CUSTOMS
CHENNAI-VII COMMISSIONERATE
CUSTOM HOUSE, NO.60, RAJAJI SALAI
CHENNAI-600001

Vs

M/s SEA QUEEN SHIPPING SERVICES PVT LTD
NO.1, KAPALI, ARUNACHALAPURAM
2ND STREET ADYAR, CHENNAI-600020

Vineet Kothari & R Suresh Kumar, JJ

Dated: March 2, 2020

Appellant Rep by: Mrs Hema Muralikrishnan, Senior Standing Counsel
Respondent Rep by: Mr J V Niranjan

Cus - Customs Broker Licensing Regulations, 2013 [CBLR, 2013] - (A) Whether in the facts and circumstances of the case, the Tribunal is right in restoring the Customs Broker License of the respondent herein? (B) Whether in the facts and circumstances of the case, the Tribunal is right and justified in allowing the appeal of the assessee by accepting the contention of the assessee that the Show Cause Notice was issued on 6.9.2017 and the inquiry officer report was submitted only on 29.11.2017 and the date of revocation of the license was on 9.5.2018 which again is more than 90 days beyond the Inquiry officer report, and overlooking the fact that the offence report dated 9.6.2017 was received by the appellant herein on 12.6.2017 and SCN was issued on 6.9.2017 which is within the stipulated period of 90 days and, therefore, there has been no breach of time lines by the appellant herein?

Held: As the issue whether time limits in the CBLR, 2013 is a mandatory one or mere directory since has been given a quietus by a number of decisions, this Court, by respectfully following those decisions and concurring with the view taken by the various High Courts as well as the Coordinate Benches of this Court, once again reiterate and amplify that, the time limits in CBLR, 2013 is mandatory, therefore, it has to be strictly followed - however, in the case in hand, at the three check points viz., under Regulation 20(1), 20(5) and 20(7), whether the Revenue has passed the test of limitation and if not, where it failed, has to be gone into - on 9.6.2017, Offence Report was generated or sent by the Customs Authorities to the Appellant/Revenue pursuant to which SCN under Regulation 20(1) was issued on 6.9.2017, in between there were only 87 days, therefore, in the first stage, the Revenue passed the test of limitation - at the second stage, since the SCN was issued on 6.9.2017, the Revenue should have prepared and sent the Enquiry Report under Regulation 20(5) on or before 5.12.2017, the fact remains that, such Enquiry Report was sent on 29.11.2017 and in between there were only 83 days, therefore, the Revenue in the second stage also has certainly passed the test of limitation - for the third stage, the Enquiry Report is dated 29.11.2017 under Regulation 20(5), however, the Order-in-Original or revocation of licence was passed on 8.5.2018 or 9.5.2018, in between there were 159 days, therefore, certainly it is beyond the 90 days limitation, as has been prescribed under Regulation 20(7) - on going through the Note file of Revenue, it has become very apparent and obvious that, it is not the Revenue, who kept the file, without passing the final order under Regulation 20(7) within the 90 days limitation period and it has been kept pending only at the instance of the Respondent/Licensee - moreover, it has been specifically agreed by the

Respondent/Licensee that, whatever period to be consumed for keeping the file in abeyance as per its request, would be reduced from the overall limitation period of 90 days and this has been specifically agreed upon by the Respondent/Licensee as it is evidenced from the Note file where the Managing Director of the Licensee has signed - these factors have never been unearthed nor been considered by the CESTAT before deciding the issue merely on the limitation point alone - law is well settled in this regard, if the concerned party is ready to forgo or give up the limitation point out of necessity by written agreement, certainly, in such kind of situation, the doctrine of 'waiver' or doctrine of 'acquiescence' can very well be invoked - the principle of 'waiver' and 'acquiescence' has been considered in a number of cases by the Apex Court - if the aforesaid principle on 'waiver' and 'acquiescence' are applied to the present facts of the case, there would be no doubt that the Respondent/Licensee intentionally relinquished his right to raise the ground of limitation, by thus, consciously abandoning the existing legal right, benefit, claim or privilege - therefore, the present act on the part of the Respondent/Licensee can very well be construed as the voluntary abandonment or relinquishment of the right of even statutory benefit, claim or privilege, therefore, he would not be entitled to insist upon the Revenue to adhere to the time schedule under the Regulation 20(7) - therefore, in the present case, there is absolutely no material to come to a conclusion that, the Revenue has failed in strictly adhering the limitation period under Regulation 20(7) of CBLR, 2013 - the Revenue has not failed in following the time schedule or limitation which is mandatory one, as has been declared by the Courts of law in number of decisions, but the Respondent/Licensee made the Revenue to wait for some time only to get some benefits on its own awaiting some orders to be passed in the parallel proceedings initiated by the Customs Authorities - since these aspects have not at all attempted to be considered by the CESTAT in the impugned order, the order of the CESTAT is liable to be interfered with - in the result, the impugned order of the CESTAT is set aside - the matter is remitted back to the CESTAT for fresh consideration, of course, only on the merits of the issue, not on the ground or point on limitation under Regulation 20 of CBLR, 2013 - in fine, the substantial questions of law are answered in favour of the Revenue as indicated above and against the Respondent/Customs Broker/Licensee, thereby this Court allows this Appeal to the extent indicated above - Appeal allowed by way of remand: HIGH COURT [para 16, 17, 18, 19, 28, 29, 30, 31, 32, 33, 35, 41, 42, 43, 44]

Matter remanded

Case law cited:

Santon Shipping Services Vs. The Commissioner of Customs, Tuticorin and another - 2017-TIOL- 2388-HC-Mad-CUS...Para 13

JUDGEMENT

Per: R Suresh Kumar:

The Respondent is a Customs Broker viz., M/s. Sea Queen Shipping Services Private Limited, whose Customs Broker Licence was revoked by the Appellant/Revenue by order dated 09.05.2008 in Order-in-Original No.63353/2018 passed by the Commissioner of Customs, Chennai - VIII. As the said order revoking the Customs Broker Licence of the Respondent had been assailed before the CESTAT, Chennai in Customs Appeal No.41944/2018, where, the Respondent/Customs Broker who was the Appellant before the CESTAT, primarily raised the issue of limitation, as has been proscribed under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 (in short "CBLR, 2013"). The CESTAT also on the only point of limitation had concluded that, the order of the Revenue dated 09.05.2018 in Order-in-Original revoking the Customs Broker Licence of the Respondent/Customs Broker was beyond the Statutory Limitation Period, accordingly the said order was set aside and the customs appeal

was allowed by the impugned order of the CESTAT in Final Order No.40627/2019 dated 27.03.2019. Felt aggrieved over the said order of the CESTAT, the Revenue preferred this Appeal by raising the following substantial questions of law:

"A. Whether in the facts and circumstances of the case, the Tribunal is right in restoring the Customs Broker License of the respondent herein?

B. Whether in the facts and circumstances of the case, the Tribunal is right and justified in allowing the appeal of the assessee by accepting the contention of the assessee that the Show Cause Notice was issued on 06.06.2017 and the inquiry officer report was submitted only on 29.11.2017 and the date of revocation of the license was on 09.05.2018 which again is more than 90 days beyond the Inquiry officer report, and overlooking the fact that the offence report dt.09.06.2017 was received by the appellant herein on 12.06.2017 and SCN was issued on 06.09.2017 which is within the stipulated period of 90 days and therefore there has been no breach of time lines by the appellant herein?"

2. The necessary facts in nutshell which are required to be noticed for the disposal of this Appeal are as follows:

2.1. That the Respondent herein is a Customs Broker Licensee at Chennai. While so, on 01.04.2016 the Customs Authorities detained the container through which consignment was imported by M/s. Payal Enterprises, an Importer, pursuant to which, the first check by the Group was ordered by the Customs Authorities on 06.04.2016. Instead of presenting the goods for the first check, the Respondent/Customs Broker seems to have sent a letter dated 21.04.2016 to the Customs Authorities with a request to amend the Bill of Entry No.4783575 dated 04.04.2016 by adding Invoice No.YF2-2016 dated 15.03.2016 by changing the description of the goods, quantity and value as per the second invoice.

2.2. In order to appreciate the aforesaid, the original Invoice i.e., the first Invoice dated 15.03.2016 and the second Invoice on the same date under which the Respondent/Customs Broker requested the Customs Authorities to make an amendment of the description of the goods, its total quantity, unit, unit price and total value of the goods in US Dollar, as has been given in the show cause notice of the Customs Authorities dated 06.06.2017 in a Tabular Column in paras 4.0 and 4.1, are extracted hereunder:

"4.0 The goods as per the first invoice YF1-2016 dated 15/03/2016 were found to be as follows [RUD #3].

Marks & numbers	Description of the goods	Total Quantity	Unit	Unit Price (USD)	Total Amount (USD)
N/M	Water filter	558	PCS	1.214	677.41
DC-201	Toy Baby Chair Assorted	25472	PCS	0.428	10902.02
RI-101	Toy Ball	34140	DZN	0.228	7783.92
HM-01	Toy Rattle	63720	PCS	0.085	5416.20

4.1 The list of goods added as per the second invoice YF2-2016 dated 15/03/2016 is as follows [RUD#4].

Marks & numbers	Description of the goods	Total Quantity	Unit	Unit Price (USD)	Total Amount (USD)
DC-201	Toy Baby Chair Assorted	800	PCS	0.272	217.60

RI-101	Toy Ball	1480	DZN	0.259	380.36
N/M	Chloro di fluoro methane	40172	KGS	0.415	16,671.38

2.3. It is the strong case of the Customs Authorities in respect of the said consignment of import from a foreign country (China) that though originally it was declared in the Invoice, the aforesaid four items viz., Water filter, Toy Baby Chair, Toy Ball and Toy Rattle, in the intended amendment through the second Invoice, it was claimed the following three goods viz., Toy Baby Chair Assorted, Toy Ball and Chloro di fluoro methane.

2.4. The said item viz., *"Chloro di fluoro methane",* is a restricted item as per the Export Import Policy of the Government. Therefore, prima facie, the Customs seems to have found that, in the name of Toy Rattle, the importer wanted to smuggle the restricted goods viz., *"Chloro di fluoro methane",* and in order to cover up their intended smuggling activity, they, according to the Customs, wanted to make the amendment in the Invoice/Bill of Entry, without even submitting the consignment for check up, as directed by the Customs Authorities.

2.5. These issues triggered the Customs Authorities to issue a very detailed show cause notice dated 06.06.2017 under Section 28 and 124 of the Customs Act, 1962 ("the Act").

2.6. In the said show cause notice, the role of the Respondent/ Customs Broker had also been dealt with and in order to appreciate the same, the relevant paragraphs of the show cause notice dated 06.06.2017 are quoted below:

"29.Though both the importer and the Customs Broker attempted to project this import as genuine import, from the documentary evidences like booking request, bill of lading, delay in presenting the goods for examination, amendment of the bill of entry despite the fact that the importer is not in a position to get the licence, the importer's dodging of the investigation, feigning of innocence by the Customs Broker for abetting the process of amendment despite the fact that the bill of lading details remain the same before and after the request for amendment etc., it appears that Shri.Praveen Kumar, Proprietor of M/s.Payal Enterprises smuggled the R-22 gas in to India by wilfully mis-declaring the same as water filter and plastic toys but on knowing that the imported goods were to be examined by SIIB attempted to fake innocence by seeking amendment with the abetment of the Customs Broker.

30. As Shri.S.Padmanabhan, Managing Director of the Customs Broker, M/s.Sea Queen Shipping Services (P) Ltd., had not informed the Customs that the importer did not possess licence for import of R-22 while processing amendment in contravention of the Regulation 11(d) of the Customs Brokers Licensing Regulations, 2013 and as he further failed to verify the antecedents of his client in contravention of the Regulation 11(n) ibid, it appears that he abetted this act of smuggling.

31. From the foregoing, the following facts appear to emerge:

(i) Shri.Praveen Kumar, Proprietor of M/s.Payal Enterprises smuggled the R-22 gas by declaring the goods as "Fabrics", "Water filter, toy baby chair, toy ball and toy rattle" in the shipper's booking request and the bill of lading respectively despite knowing that the R-22 gas requires licence to import and that he did not possess the licence as well.

(ii) On scrutiny of the scanned image pertaining to the container SEGU4809899 imported by M/s. Payal Enterprises, SIIB detained the said container for detailed examination even before filing of Bill of Entry by the importer.

(iii) The importer filed a bill of entry No.4783575 dated 04/04/2016 through their Customs Broker M/s.Sea Queen Shipping Services (P) Ltd. for the clearance of goods declared as "Water filter,

toy baby chair, toy ball and toy rattle and the said Bill of Entry was ordered for first check on 06.04.2016 by the group.

(iv) However, upon learning the detention of the subject goods SIIB, the importer through the Customs Broker submitted a letter dated 21/04/2016 requesting for amendment of the Bill of Entry by adding a second invoice and by changing the description of the goods, quantity and value as per the second invoice thereby the importer amended the bill of entry to include Chlorodifluoromethane (R22 gas), a restricted item for import which requires licence from DGFT.

(v) Shri.Kundan Kumar, who claimed himself to be the authorised person of M/s. Payal Enterprises vide a letter dated 02/05/2016 played innocent that the item Chlorodifluoromethane was imported from China without knowing that the item was a restricted item despite the fact that the same was not declared in the bill of lading and the booking request.

(vi) Shri. S. Padmanabhan, Managing Director of the Customs Broker company M/s. Sea Queen Shipping Services (P) Ltd., had not presented the imported goods for examination even after two weeks from ordering of first check by the Appraising Group, informed the detention of the goods to the importer and agreed to seek amendment of the bill of entry considering the importer's omission to include the R-22 item as genuine mistake despite the lack of any evidence of such antecedents and the fact the non-declaration of R-22 in the bill of lading thereby actively abetting the smuggling of the R-22 by the importer.

(vii) Shri S. Padmanabhan, Managing Director of the Customs Broker, M/s.Sea Queen Shipping Services (P) Ltd., had not informed the Customs that the importer did not possess licence for import of R-22 while processing amendment in controvention of the Regulation 11(d) of the Customs Brokers Licensing Regulations, 2013 and further failed to verify the antecedents of his client in contravention of the Regulation 11(n) ibid thereby abetting this act of smuggling.

(viii) ....

(ix) .....

(x) .....

(xi) .....

(xii) ....

(xiii) ....

(xiv) The Customs Broker M/s.Sea Queen Shipping Services (P) Ltd. is liable for penalty under Section 112(a) of the Customs Act, 1962 for abetting the smuggling of R-22 gas by the importer and his failure to ensure compliance of Regulation 11(d) and Regulation 11(n) of the Customs Broker Licensing Regulations, 2013 by not informing the department that the importer did not possess the licence to import R-22.

(xv) The Customs Broker is also liable for penalty under Section 114AA of the Customs Act, 1962 for giving wilful mis-statement in respect of the imported goods before Customs.

32. Therefore, Shri. Praveen Kumar, Proprietor, M/s.Payal Enterprises, Chennai Shri. Kundan Kumar, authorised person of M/s. Payal Enterprises and M/s.Sea Queen Shipping Services (P) Ltd., and M/s.Seahorse Ship Agencies Pvt. Ltd., the agent for the containers are hereby called upon to show cause to the Additional/Joint Commissioner of Customs, Group 6, Commissionerate - II, Custom House, Chennai - 1 within 30 days from the receipt of this notice as to why:

(i) ...

(ii) ...

(iii) ...

(iv) ....

(iii) ....

(iv) Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on the Customs Broker, M/s. Sea Queen Shipping Services (P) Ltd., for abetting the smuggling of R22 gas and by his failure to ensure compliance of Regulation 11(d) and Regulation 11(n) of the Customs Broker Licensing Regulation, 2013.

(vi) Penalty under the SEction 114AA of the Customs Act, 1962, should not be imposed on the Customs Broker, M/s. Sea Queen Shipping Services (P) Ltd., for giving false declarations in respect of the imported goods before Customs."

2.7. Pursuant to the show cause notice, the Customs Authorities as contemplated under Regulation 20(1) of CBLR, 2013 had sent an Offence Report on 09.06.2017 in the following terms to the Commissioner of Customs Broker Section, Commissionerate VIII, Custom House, Chennai.

"Upon scrutiny of the scanned images of the container in respect of the consignment imported by M/s.Payal Enterprises, it was found that the items declared in the IGM did not tally with the images and the container was detained by SIIB Section for detailed investigation. After the completion of the investigation, Show Cause Notice had been issued under Section 28 and Section 124 of the Customs Act, 1962.

2. The Customs Broker M/s.Sea Queen Shipping Services (P) Ltd., License No.R226, who is also a noticee in the aforesaid Show Cause Notice appears to have contravened the provisions of CBLR, 2013.

3.Hence, copy of the Show Cause Notice issued in F.No.ENQ 25/2016-SIIB & SIIB/19/2017 dated 06.06.2017 along with relied upon documents are forwarded for further necessary action under Custom Broker Licensing Regulations, 2013."

2.8. As contemplated under CBLR, 2013, the Appellant/Revenue, who is the authority under CBLR, 2013 had issued show cause notice on 06.09.2017 under Regulation 20(1) of CBLR, 2013.

2.9. Subsequently, after giving an opportunity as contemplated under the Regulations, Enquiry Report under Regulation 20(5) of CBLR, 2013 of the concerned authority, who had enquired the matter, has been sent. Thereafter, pursuant to such Enquiry Report, the Authority concerned, who is authorised to deal with the licence of the Respondent/Customs Broker had passed Order-in-Original on 08.05./09.05./2018 revoking the Customs Broker Licence of the Respondent for the proven charge, as per the Enquiry Report.

2.10. Only the said order dated 08/09.05.2018 i.e., the Order-in- Original revoking the Customs Broker Licence of the Respondent was challenged before the CESTAT, who, on the only ground of limitation under CBLR, 2013 allowed the Appeal of the Respondent/Custom Broker through the impugned order.

3. Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Appellant/Revenue would make the contention that, first of all the time lines given in CBLR, 2013 itself is not a mandatory one to be followed in the stricto sensu, instead, it is only directory,

therefore, the various Regulations of CBLR, 2013 need not be construed in stricto sensu and therefore, on that point or ground alone, the order of Revenue revoking the Customs Broker Licence of the Respondent ought not to have been set aside by the CESTAT.

4. The learned counsel for the Revenue would also contend that, insofar as the Regulation 20(1) Show Cause Notice and 20(5) Enquiry Report aspects are concerned, assuming without admitting that the limitation of 90 days prescribed therein respectively are to be strictly followed, the Revenue followed the same, however, in respect of the final order of revocation of licence to be passed under Regulation 20(7) is concerned, the same was passed beyond 90 days as contemplated therein which is only because of the attitude and approach of the Respondent and not by the inaction of the Revenue. Therefore, the learned counsel would contend that, the Order - Original revoking the licence is sustainable one, therefore, the order impugned passed by the CESTAT on the only ground of limitation is liable to be interfered with, since the same has not been made by analysing the issue in proper perspective by the CESTAT.

5. Per contra, Mr. J.V. Niranjan, learned counsel appearing for the Respondent/Custom Broker would make his submissions that, as to whether the time limits in CBLR, 2013 are mandatory one or mere directory, is no more res integra, as the said issue has been decided by various High Courts in number of cases and our High Court also atleast in more than two or three decisions, have taken the same view that, the CBLR, 2013 is a mandatory one and therefore, it should be construed and to be followed in stricto sensu, therefore, the argument advanced by the Revenue side, according to the learned counsel for the Respondent, is completely unsustainable, in view of the settled legal position in this regard.

6. The learned counsel for the Respondent would also contend that, even in respect of the fine imposed by the Customs Authorities under the parallel proceedings initiated by the Customs Authorities, pursuant to the show cause notice dated 06.06.2017, though it was ended in imposing a penalty on this Respondent/Custom Broker, the same has subsequently been set aside by the higher Authorities. Therefore, the Revenue cannot even plead that, the Respondent since has been adjudicated by the Customs Authorities under the provisions of the Customs Act and was imposed a fine, the issue as to whether the Custom Broker Licence is to be revoked or not, cannot be shadowed merely on the basis of the limitation alone, as that plea also would not hold water, therefore, on that ground also, the Revenue cannot take any advantage to sustain its order of revocation of licence.

7. The learned counsel for the Respondent would also submit that, though the Customs Broker Licence of the Respondent was initially suspended under the CBLR, 2013, subsequently such suspension also was revoked, thereby the licence of the Respondent was restored and during the last few years, the Respondent has been continuously doing its business uninterruptedly. Therefore, the learned counsel would submit that, both on the ground of the limitation as well as on merits, the Revenue does not have any case to project as against the view taken by the CESTAT through the impugned order, therefore, it does not require or warrant any interference from this Court.

8. We have given our anxious consideration to the rival submissions made by the learned counsel appearing for the parties and also perused the materials placed before this Court.

9. Before delve into the controversy, for easy and ready reference, the relevant Regulation of CBLR, 2013 viz., Regulation 20 is quoted hereunder:

"20. Procedure for revoking licence or imposing penalty.-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which

it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the 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."

10. Under this Regulation i.e. Regulation 20, three Sub Regulations prescribe limitation in every stage of the adjudication against Customs Broker. Regulation 20(1) prescribes a limitation of 90 days for issuance of show cause notice from the date of receipt of Offence Report. Regulation 20(5) prescribes the limitation of again 90 days to submit the Enquiry Report from the date of issue of show cause notice under sub-regulation (1). Like that, sub-regulation (7) prescribes yet another limitation of 90 days from the submission of Enquiry Report to pass final order for revocation of licence or otherwise.

11. The issue whether these limitations prescribed in various Sub Regulations of Regulation 20 are to be strictly followed in the mandatory sense or not had already engaged the law Courts in a quite number of cases.

12. Since the learned counsel for the Revenue has made a vehement contention that, the CBLR, 2013 is only directory and not mandatory, whether the said contention can be accepted or not is the question where if we look at the earlier decisions in this regard, the said point raised by the Revenue as to whether the time limits in CBLR, 2013 is mandatory or directory can be easily answered.

13. In this context, a similar issue came up before a Coordinate Bench of this Court in the matter of *Santon Shipping Services Vs. The Commissioner of Customs, Tuticorin and another reported in -* **2017-TIOL-2388-HC-Mad-CUS**. The Coordinate Bench of this Court, wherein one of us is Party (R.Suresh Kumar, J.), having considered a number of decisions of various High Courts, have concluded that, the CHALR-2004 i.e., the erstwhile Regulation which dealt with the Customs Broker Licence and that was replaced subsequently by the present CBLR, 2013, is a Mandatory Regulation. For an easy reference and understanding of the said decision, the relevant portion of the said Division Bench order are quoted hereunder:

"31. Insofar as the issue of limitation is concerned, it is the case of the appellant that, admittedly, the offence report of DRI was generated on 21.09.2010. If the said date is taken into account for the purpose of issuance of show cause notice under Regulation 22(1) of CHALR, 2004, the show cause notice should have been issued on or before 21.12.2010, but the fact remains that the show cause notice was issued only on 18.11.2011. Therefore, whether or not the belated show cause notice issued beyond 90 days would be fatal to the entire proceedings which culminated in the Order-in-Original, whereby, the licence of the appellant stood revoked and its security deposit has got forfeited, is to be examined.

32. In order to find out the answer to the aforesaid question, the Judgments relied upon by the learned counsel appearing for the appellant can be adverted to. In Sanco Trans Ltd Vs. Commissioner of Customs (Seaport/Import), Chennai, 2015 (322) E.L.T 170 (Mad.) = ***2015-TIOL-1524-HC-MAD-CUS*** *(supra), a learned Judge of this Court has dealt with almost similar situation, as in that case, the offence report was received on 29.8.2012 and the show cause notice was issued on 05.3.2015. Therefore, invoking the mandatory requirement of Regulation 22(1), the learned Judge held that, the said show cause notice was beyond the limitation period.*

33. The said Judgment referred to above, when, appealed, was confirmed by a Division Bench of this Court in Commissioner of Customs (Seaport/Import), Chennai Vs. Sanco Trans Ltd, 2016 (334) E.L.T. 274 (Mad.) = ***2016-TIOL-72-HC-MAD-CUS*** *(supra). In another Judgment of the Division Bench of the Delhi High Court, in Overseas Air Cargo Service Vs. Commissioner of Customs (General), New Delhi, 2016 (340) E.L.T. 119, (Del.) =* ***2016-TIOL-1531-HC-DEL-CUS*** *(supra), the Division Bench following Indair Carrier Pvt. Ltd Vs. Commissioner of Customs(General), 2016 (337) E.L.T. 41 (Del.) =* ***2016-TIOL-1111-HC-DEL-CUS*** *(supra) has allowed the contention that the limitation prescribed under CHALR, 2004 had to be mandatorily followed."*

34. .....

35. Almost similar view has been taken consistently by the Division Bench of Delhi High Court in Commissioner of Customs (General) Vs. S.K. Logistics, 2016 (337) E.L.T. 39 (Del.) = ***2016-TIOL-845-HC-DEL-CUS****, and Sunil Dutt Vs. Commissioner of Customs (General), NCH, 2016(337) E.L.T.162 (Del.) =* ***2016-TIOL-1135-HC-DEL-CUS***

*36. In Impexnet Logistic Vs. Commissioner of Customs (General), 2016 (338) E.L.T. 347 (Del.) = **2016-TIOL-1069-HC-DEL-CUS**, the same Division Bench while taking the same view, has held as follows:*

*8. Recently by an order dated 24th April, 2016 in W.P.(C) No. 1734/2016 [HLPL Global Logistics Pvt. Ltd.v. The Commissioner of Customs (General)] [2016 (338) E.L.T.365 (Del.)] = **2016-TIOL-1119-HC-DEL-CUS** this Court reiterated that the time-limits in Regulation 20 of the CBLR/Regulation 22 of the CHALR are sacrosanct.*

9. Admittedly, the SCN under the CHALR/CBLR in the present case was issued only on 9th December, 2013, i.e., beyond the mandatory period of 90 days from the date of receipt of the offence report by the Respondent, i.e., 31st January, 2013. Consequently, all proceedings pursuant thereto are held to be invalid. Further, even the enquiry report was not submitted within a period of 90 days of the issuance of the SCN.

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

*37. That apart, atleast in two Judgments of this Court, where a similar issue came up for consideration, before one of us sitting singly (Rajiv Shakdher,J), a similar view was taken. The first Judgment is dated 15.12.2016, which was passed in W.P.No.37796 of 2016, in the matter of M/s. Sowparnika Shipping Services Vs. The Commissioner of Customs, Chennai = **2017-TIOL-604-HC-MAD-CUS** and another wherein, the Judgments referred to hereunder were noticed and followed:*

*i) A.M.Ahamed & Co. V. Commissioner of Customs (Imports), Chennai- 2014 (309) E.L.T. 433 (Mad) = **2014-TIOL-1503-HC-MAD-CUS***

*ii) Masterstroke Freight Forwarders P. Ltd., V. Commissioner of Customs (I), Chennai - 2016 (332) ELT 300 (Mad.) = **2015-TIOL-2847-HC-MAD-CUS***

*iii) Sunil Dutt V. Commissioner of Customs (General), NCH - 2016 (337) ELT 162 (Del.) = **2016-TIOL-1135-HC-DEL-CUS***

*iv) Impexnet Logistics V. Commissioner of Customs (General) - 2016 (338) ELT 347 (Del.) = **2016-TIOL-1069-HC-DEL-CUS***

*v) Overseas Air Cargo Services V. Commissioner of Customs (General), New Dekgu- 2016 (340) ELT 119 (Del.) = **2016-TIOL-1531-HC-DEL-CUS***

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

*39. Following the said Judgment in M/s. Sowparnika Shipping Services Vs. Commissioner of Customs, Chennai and another, one of us (Rajiv Shakdher,J) allowed yet another writ petition i.e., W.P.No.44344 of 2016, in the matter of M/s. Patriot Freight Logisitics System Vs. Commissioner of Customs, Commissionerate - VIII, Chennai and two others vide Judgment dated 03.02.2017 = **2017-TIOL-429-HC-MAD-CUS**.*

40.....

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

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

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

14. The learned CESTAT also in the impugned order has relied upon two decisions of this Court in paras 5.1 and 5.2 of the impugned order which reads thus:

"5.1 The Hon'ble Madras High Court judgment in the case of M/s.A.M.Ahamed & Co. (supra) has inter alia held as under:

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

21. .....

22. .....

*23. Relying upon the decision of the Supreme Court In Sambhaji vs. Gangabai(2009 (240) E.L.T.161 (S.C.) = **2009-TIOL-79-SC-MISC**, it is contended by Mr.A.P.Srinivas, learned Standing Counsel for the respondents, that a procedural law should not ordinarily be construed as mandatory. But the said contention is wholly unsustainable, for the simple reason that a period of limitation prescribed by a Rule of procedure, cannot be diluted. The decision of the Supreme Court arose out of the refusal of a Civil Court to accept a Written Statement beyond a period of 90 days stipulated in Order VIII Rule 1 C.P.C. Therefore, the decision taken in such a case cannot be relied upon.*

24. Similarly, the decision of the Division Bench of the Delhi High Court, in Aval Exports vs. Union of India (2014 (301) E.L.T. 14 (Del.), relied upon by the learned counsel for the respondents, cannot also go to the rescue of the respondents. The case before the Delhi High Court concerned some applications filed for the issue of value based duty free licences in accordance with the Export and Import policy in vogue. The applications were kept pending for some time and eventually, the policy itself underwent a change. When the matter was taken up, it was argued that the applications ought to have been disposed of within the time stipulated. But the said argument was rejected, on the ground that the time prescribed therein was only directory and not mandatory.

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

Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld.

5.2 We also note that the Hon'ble High Court of Madras which is the jurisdictional High Court for this forum, in a very recent decision dt. 22.11.2018 in the case of Carewell Shipping Pvt. Ltd., (supra) in W.P.Nos.26923 and 23934 of 2018 held as under :

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

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

12. It is claimed by the Revenue that the petitioner is an habitual offender and therefore, the proceedings are rightly initiated against them. This Court is not inclined to go into such allegation against the petitioner, as this Court is inclined to interfere with the impugned proceedings only on the ground of limitation, as discussed supra. If the petitioner is an habitual offender, as alleged by the Revenue, it is not known as to what prevented the concerned authorities in proceeding against the petitioner by following the mandatory requirements contemplated under law. When there is a lapse on the part of the concerned authority in not making the report within the time stipulated which prevents further proceedings, the Revenue has to blame itself for such lapse, especially when the Courts have held that the period of limitation prescribed under the Regulation, as discussed supra, is mandatory.

13. Considering all the above facts and circumstances, this Court is inclined to set aside the impugned show cause notice dated 13.04.2018. Accordingly, W.P.No.26923 of 2018 is allowed and the impugned show cause dated 13.04.2018 is set aside."

15. Only in these context, by following number of decisions, as has been referred to above, the CESTAT has taken the view that, the Regulation 20 of CBLR, 2013 has been followed in the

breach, therefore, the order revoking the Customs Broker Licence of the Respondent, who was Appellant before the CESTAT, was set aside.

16. As the issue whether the CBLR, 2013 is a mandatory one or mere directory since has been given a quietus by a number of decisions, as has been referred to above, we, by respectfully following those decisions and concurring with the view taken by the various High Courts as well as the Coordinate Benches of this Court, once again reiterate and amplify that, the time limits in CBLR, 2013 is mandatory, therefore, it has to be strictly followed.

17. However, in the case in hand, at the three check points viz., under Regulation 20(1), 20(5) and 20(7), whether the Revenue has passed the test of limitation and if not, where it failed, has to be gone into.

18. To appreciate the said aspects, the dates are relevant. On 09.06.2017, Offence Report was generated or sent by the Customs Authorities to the Appellant/Revenue pursuant to which show cause notice under Regulation 20(1) was issued on 06.09.2017, in between there were only 87 days, therefore, in the first stage, the Revenue passed the test of limitation. At the second stage, since the show cause notice was issued on 06.09.2017, the Revenue should have prepared and sent the Enquiry Report under Regulation 20(5) on or before 05.12.2017, the fact remains that, such Enquiry Report was sent on 29.11.2017 and in between there were only 83 days, therefore, the Revenue in the second stage also has certainly passed the test of limitation.

19. Hence, the issue now revolves only in a very narrow compass, i.e. whether the Revenue passed the third stage of limitation which comes under Regulation 20(7) of CBLR, 2013 or not. Again the dates are, the Enquiry Report is dated 29.11.2017 under Regulation 20(5), however, the Order-in- Original or revocation of licence was passed either on 08.05.2018 or 09.05.2018, in between there were 159 days, therefore, certainly it is beyond the 90 days limitation, as has been prescribed under Regulation 20(7).

20. Merely because of this 159 days in between these two dates, as referred to above, whether we can straight away construe that the final order of revocation of licence passed by the Revenue was beyond the 90 days limitation and therefore, the Order in entirety shall go only on the ground of limitation. In this context only, we should look into the facts of the case, which are very much essential to see the real reason or real happenings to know whether the Revenue has failed in their duty to strictly adhering the time limit of 90 days or the Respondent/Customs Broker has made the Revenue to wait for a particular period unmindful of the 90 days limitation.

21. Only in order to ascertain these factors, we had already directed the Revenue to produce the original record, pursuant to which, Mrs.Hema Muralikrishnan, learned counsel appearing for the Appellant/Revenue has produced the records and a photocopy of the entire Note file has also been filed which has been taken on file before this Court for our perusal.

22. On perusal of the same, we found that, certain interesting factors emerged from the Note file which are noteworthy, or to be taken note of. After the show cause notice dated 06.09.2017, the Respondent had taken time to give reply or to appear before the Appellant/Revenue to give show cause.

23. On 23.10.2017, in the Note file, it has been recorded that, on 16.10.2017 the Respondent/Licensee sent a letter stating that, they have filed Writ Petition before the High Court and stay order is awaited, hence the Revenue may wait for Court order. Despite these kind of request having been made, the Revenue have been vigilant on the limitation point and ultimately sent the Enquiry Report on 29.11.2017 within the limitation period of 90 days.

24. Thereafter, several days the issue had been adjourned or deferred on the request of the Respondent/Licensee. On 28.11.2017 in fact, the Respondent approached the

Appellant/Revenue to defer the matter even to complete the Enquiry Report on the ground that, this Court in W.P.No.26820 of 2017 as well as W.P.No.20994 of 2017 granted interim order of stay of suspension of the Customs Broker Licence of the respondent and therefore, in that context, the Respondent seems to have requested for deferral of Enquiry. However, the fact remains that, the Customs Broker Licence of the Respondent had already been revoked vide Order No.59094/2017 dated 13.10.2017 in some other case, therefore the stay order granted against the suspension order in the present case will not have any effect and therefore, that seems to have not detained the Revenue to prepare the Enquiry Report on 29.11.2017 for further proceedings.

25. In these context, after Enquiry Report, the copy of which was also given to the Respondent to respond, after several dates, at one point of time, the Respondent on 05.02.2018 has sent a request to the Appellant/ Revenue in the following terms:

"Respect Sir,

Sub: Personal Hearing against SCN dated 6/9/17 - Request for time -reg.

Greetings to you.

We have for reference Your Office Letter CHN/R-226/2013- (CHA) dtd 30/1/2018 received by us on 31/1/18 requesting our presence on 8/2/18 by 1130 AM for a personal hearing in connection with the above SCN issued by you on 6/9/17. In reply, we would like to inform you that our Consultant Shri Ajay Gupta is out of station on 8/2/18. And hence we would request an alternative date either on 12/2/18 or 13/2/18 for attending the Personal hearing before you for the referred matter. We regret for the inconvenience caused in this Regard. Thanking you."

26. Pursuant to the said request dated 05.02.2018, the Appellant/ Revenue on 09.02.2018 has communicated the following:

"SUB: INTIMATION OF PERSONAL HEARING - REG. REF: SCN DATED 06.09.2017 UNDER REG-20 OF CBLR, 2013 AND OPPORTUNITY GRANTED FOR PERSONAL HEARING ON 08.02.2018.

Please refer to your letter dated 05.02.2018 requesting an alternative date for personal hearing on 12/02/2018 or 13/02/2018.

In this regard, Commissioner of Customs (Chennai-VIII) has granted a fresh opportunity for personal hearing on 12.02.2018 at 11:30 Hrs.

In view of the above, you are directed to appear before the Commissioner of Customs (Chennai-VIII), Room No.K-603, Krishna Block, 6th Floor, No.60, Rajaji Salai, Custom House, Chennai on the scheduled date and time for the said purpose."

27. Accordingly, on 12.02.2018, the Respondent/Licensee appeared before the Appellant/Revenue and after having taken note of the limitation factor as well as the merits of the case, he has made a request to keep the matter in abeyance to avail the orders to be passed on the main issue against Customs Department and that order was expected to be in their favour. The said request was recorded by the Revenue in the Note file dated 12.02.2018 during the hearing and it has also been recorded with the following words. "This period will be reduced from the time limits when the case is decided. They agreed for it." Therefore, the said arrangement of keeping the file in abeyance for some time awaiting the orders to be passed in the main issue initiated by the Customs Department where also the Respondent/Licensee was the party, was made only at the instance of the Respondent, and the said time where the present issue was kept in abeyance as per the request of the Licensee, definitely shall be

reduced from the overall 90 days limitation period provided under sub-regulation (7) of Regulation 20 of CBLR, 2013. For the said arrangement, which had been made purely on the request of the Petitioner, one Mr.Padmanabhan, Managing Director of the Respondent/Licensee has signed it in the very Note file itself on 12.02.2018.

28. Therefore, it has become very apparent and obvious that, it is not the Revenue, who kept the file, without passing the final order under Regulation 20(7) within the 90 days limitation period and it has been kept pending only at the instance of the Respondent/Licensee.

29. Moreover, it has been specifically agreed by the Respondent/ Licensee that, whatever period to be consumed for keeping the file in abeyance as per its request, would be reduced from the overall limitation period of 90 days and this has been specifically agreed upon by the Respondent/Licensee as it is evidenced from the Note file where the Managing Director of the Licensee has signed.

30. These factors have never been unearthed nor been considered by the CESTAT before deciding the issue merely on the limitation point alone.

31. Law is well settled in this regard, if the concerned party is ready to forgo or give up the limitation point out of necessity by written agreement, certainly, in such kind of situation, the doctrine of 'waiver' or doctrine of 'acquiescence' can very well be invoked.

32. The principle of 'waiver' and 'acquiescence' has been considered in a number of cases by the Hon'ble Apex Court. Illustratively, some of the Case laws where the principle was underlined by the Hon'ble Supreme Court are quoted below for easy reference.

(i) P. Dasa Muni Reddy v. P. Appa Rao [(1974) 2 SCC 725]:

"13. Abandonment of right is much more than mere waiver, acquiescence or laches…..Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver some times partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question….."

(ii) Waman Shriniwas Kini v. Ratilal Bhagwandas & Co. [1959 Supp. (2) SCR 217]:

"13……Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied…."

(iii) Krishna Bahadur v. Purna Theatre and others, [(2004) 8 SCC 229]:

"10.A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement

waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

(iv) State of Punjab v. Davinder Pal Singh Bhullar and others [(2011) 14 SCC 770]:

"41.Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide : Dawsons Bank Ltd. v. Nippon Menkwa Kabushihi Kaish, AIR 1935 PC 79; Basheshar Nath v. CIT, AIR 1959 SC 149; Mademsetty Satyanarayana v. G. Yelloji Rao, AIR 1965 SC 1405; Associated Hotels of India Ltd. v. S. B. Sardar Ranjit Singh, AIR 1968 SC 933; Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corporation, (1992) Supp (1) SCC 5; Sikkim Subba Associates v. State of Sikkim, AIR 2001 SC 2062; and Krishna Bahadur v. Purna Theatre & Ors., AIR 2004 SC 4282."

33. If the aforesaid principle on 'waiver' and 'acquiescence' are applied to the present facts of the case, there would be no doubt that the Respondent/Licensee intentionally relinquished his right to raise the ground of limitation, by thus, consciously abandoning the existing legal right, benefit, claim or privilege. Having known the right of raising the point of limitation against the Revenue, the Respondent/Licensee voluntarily relinquishing or abandoning such a known existing legal right by giving a written consent on 12.02.2018 stating "that this period will be reduced from the time limits when the case is decided". Even a statutory right also may be waived by the conduct of the party, here in the case in hand, the statutory prescription of limitation compelling the Revenue to pass final order under Regulation 20(7) within the 90 days period contemplated therein, was very well known to the Respondent/Licensee, however, by his voluntary action either he relinquished such right or abandoned the benefit, thereby, the statutory right of limitation, which otherwise, could be insisted upon against the Revenue in case the Revenue failed in strictly adhering to the limitation period on their own. Therefore, the present act on the part of the Respondent/Licensee can very well be construed as the voluntary abandonment or relinquishment of the right even statutory benefit, claim or privilege, therefore, he would not be entitled to insist upon the Revenue to adhere to the time schedule under the Regulation 20(7).

34. Here in the case in hand, insofar as the first two limitation stages are concerned, as we have discussed above, the Revenue had been very cautious and strictly followed the limitation period in issuing show cause notice as well as preparing and sending the Enquiry Report.

35. Insofar as the third stage of limitation i.e. for passing final order of revocation of licence or imposing penalty order against the Customs Broker, though the Revenue had been very conscious about the limitation, it was triggered by the voluntary action and request made by the Respondent/ Customs Broker alone, who made the Revenue to keep the file in abeyance, therefore, in the present case, there is absolutely no material to come to a conclusion that, the Revenue has failed in strictly adhering the limitation period under Regulation 20(7) of CBLR, 2013.

36. In para 42 of the order in Santon Shipping Services (cited supra), the Coordinate Bench of this Court has made it clear that, once the limitation prescribed is mandatory, as has been declared by the Courts of law, it cannot be stated that, because of the other issues, i.e., the merit of the case, this mandatory requirement of the limitation can be ignored.

37. Thereby the Division Bench in the said case has made it clear that, the mandatory requirement of the limitation cannot be ignored because of the influence of other issues.

38. Here in the case in hand, the mandatory requirement of the limitation has never been ignored by the Revenue. Even in respect of the 90 days limitation under Regulation 20(7) of CBLR, 2013, the Revenue was very conscious and was very particular about the limitation within which, they wanted to pass the final order. However, it was the Respondent/Custom Broker/Licensee should voluntarily given up its right to insist the limitation clause by making a request to the Revenue to keep the file in abeyance awaiting the orders to be passed in the related/parallel proceedings initiated by the Customs Authorities where the Licensee expected some favourable orders.

39. Further, it has been specifically given up or agreed by the Licensee that, whatever period to be consumed to keep the file in abeyance as requested by it, such period would also stand excluded from the 90 days limitation prescribed under Regulation 20(7).

40. Only in these kind of situations, as we referred to above, the doctrine of 'waiver' as well as 'acquiescence', would certainly come to play. Here in the case in hand, the exact situation arose as the Respondent/ Licensee by its voluntary action has waived the limitation period. Therefore, he cannot now turn around and show the finger against the Revenue as if the Revenue has failed in their endeavour to strictly adhere to the time limits/limitations prescribed under CBLR.

41. If we look at the issue in the afore discussed angle, certainly the irresistible conclusion would be that, the Revenue has not failed in following the time schedule or limitation which is mandatory one, as has been declared by the Courts of law in number of decisions referred to above, but the Respondent/Licensee made the Revenue to wait for some time only to get some benefits on its own awaiting some orders to be passed in the parallel proceedings initiated by the Customs Authorities.

42. Since these aspects have not at all attempted to be considered by the CESTAT in the impugned order, we are of the considered view that, in fact, we are fully satisfied that, the given facts and circumstances of the case in hand, makes it abundantly clear that, the order of the CESTAT is liable to be interfered with. As we aware that the Tribunal since has passed the impugned order only on the basis of limitation and merits of the issue since has not been discussed, we are constrained to remit this matter to the CESTAT for fresh hearing to decide the issue on merits without going into the limitation point.

43. In the result, the impugned order of the CESTAT is set aside. The matter is remitted back to the CESTAT for fresh consideration, of course, only on the merits of the issue, not on the ground or point on limitation under Regulation 20 of CBLR, 2013. It is open to the parties to the lis to agitate the issue on merits before the CESTAT as such opportunities would be given by the CESTAT to both parties and accordingly the CESTAT would decide the issue on merits at the earliest within a reasonable time.

44. In fine, the substantial questions of law are answered in favour of the Revenue as indicated above and against the Respondent/Customs Broker/Licensee, thereby we allow this Appeal to the extent indicated above. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.