

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86621 OF 2024

[Arising out of Order-in-Original No: 17/CAC/PCC(G)/SG/CBS-Adj dated 12th June 2024 passed by the Principal Commissioner of Customs (General), Mumbai.]

M D Ruparel & Sons

Torana Apartment, 1-A, Sahar Village Road,
Andheri (E), Mumbai 400 099

... Appellant

versus

Principal Commissioner of Customs (General)

New Custom House, Ballard Estate, Mumbai 400 001

...Respondent

APPEARANCE:

Shri JC Patel and Shri Vineet Singh, Advocates for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85521/2025

DATE OF HEARING:	09/10/2024
DATE OF DECISION:	08/04/2025

PER: C J MATHEW

This appeal of M/s M D Ruparel & Son, holder of customs
broker licence no. 11/244, lies against order¹ of Principal

¹ [order-in-original no. 17/CAC/PCC(G)/SG/CBS-Adj dated 12th June 2024]

Commissioner of Customs (General), Mumbai in which the licence was ordered to be revoked and security deposit forfeited under regulation 14 of Customs Broker Licensing Regulations, 2018 while imposing penalty of ₹ 50,000 under Customs Broker Licensing Regulations, 2018 on them for alleged breach of obligations enumerated in regulation 10 of Customs Broker Licensing Regulations, 2018.

2. Allegedly, the customs broker had been involved in handling of consignments of several exporters by forging 'factory stuffing permissions' to give the appearance that the goods had been subjected to examination and, thus, entitled to claim ineligible drawback of ₹ 49,56,21,314 on shipment declared to be valued at ₹ 5,43,58,38,842. Narrowing down the imputation of misconduct to the facts, proceedings were initiated for breach, thereby, of regulation 10(a), 10(d) and 10(n) of Customs Broker Licensing Regulations, 2018 and, though the enquiry officer did return a report of none of the charges having been proved, Principal Commissioner of Customs (General) thought it fit to issue a disagreement memo, insofar as the finding on regulation 10(a) and regulation 10(n) of Customs Broker Licensing Regulations, 2018 is concerned, and, holding these to be proved, rained all the provisioned detriments on the customs broker.

3. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

4. We find that, in the instant case, notice was issued on 22nd May 2023 well beyond the 90 days from receipt of offence report stipulated for initiating action. Furthermore, the report dated 28th November 2023 was also submitted beyond the 90 days from the date of show cause notice prescribed for completion of inquiry. It is also seen that the revocation order dated 12th June 2024 exceeded the 90 days from the date of enquiry report mandated for completion of the process. There was, thus, patent breach of timelines at every stage of the proceedings.

5. On perusal of the impugned order, there is no finding that the acts, omission or commission on the part of the customs broker was cause of one or more of the delays. The Hon'ble High Court of Bombay in *Principal Commissioner of Customs (General), Mumbai v. Unison Clearing P Ltd* [2018 (361) ELT 321 (Bom)] held that

'10. The question, therefore, is whether the provision contained in Regulation 20 is mandatory or directory. The use of the word "shall" in normal parameters be construed as mandatory and the word "shall" would be required to be read as "must" unless and until it was essentially read as "may" to achieve the legislative intention and to be construed in accordance with its use in the provision. However, it cannot be laid down as an universal rule that whenever the word "shall" is used in a statute, it would only mean to be of mandatory nature, whereas the word "may", would be indicative of being directory. However, use of such word is not the sole test or criteria, but the said word shall be construed by taking into

consideration the nature, design and the consequences, which would flow from construing it one or the other way.

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13. The Learned Counsel appearing for the licensee, by relying on the said judgments would argue that the said Hon'ble High Courts have granted benefit to the Customs Brokers on account of non-adherence to the time limit. Reliance is also placed on the judgment of the said CESTAT West Zonal Bench, Mumbai delivered in Appeal No. C/87322/15 [2017 (357) ELT 1017 (Tribunal)] in case of M/s. Maakrupa Forwarders Pvt. Ltd v. Commissioner of Customs, Mumbai, dated 18 October, 2016. Perusal of the said judgment, would reveal that Revenue had taken 1221 days to complete the inquiry for which a period of 270 days is prescribed in CBLR, 2013 and in this backdrop, the Tribunal observed that due to inordinate delay of exceptional nature in completing the proceedings, fundamental right of work is being denied to the appellant and it was also observed that the Customs Brokers who are unscrupulous, get the advantage of the delay and people who are not guilty would continue to suffer the suspension and revocation on account of delay by revenues due to lack of responsibility.

The said judgment of the CESTAT reflects a extreme situation and the data which was placed before the Tribunal revealed that inquiries had been pending for more than five years and in this backdrop, the Tribunal commented about the inordinate delay. This is what precisely is to be avoided. The order passed by the CESTAT cannot be said to be erroneous by taking into consideration the enormous delay, reflecting the attitude of the Revenue, which had failed to discharge its duty, causing serious inconvenience to the Customs House Agent, which in any cannot be justified. However, the said principle cannot be

accepted as an absolute principle where the delay of 15 days has also been held to be inordinate and the licence came to be restored. We do not propose to deal with these two extremities since we are of the considered view that the midline has to be drawn where the time line may not be construed as so rigid, inflexible and a reasonable deviation is permissible where delay is accounted for and the Revenue would be made accountable in discharge of its statutory duty.

The principle, which is to be applied to construe whether the Regulation is directory or mandatory, is to be tested by examining the consequences of the Regulation being treated either way in the context of the aim and object of the provision.

14. Adherence to the time schedule prescribed in the Regulation 20 in a rigid way would lead to a situation where non-compliance with the time frame and even deviation by a single day would resultantly invalidate the entire action and the licence which is under suspension or which is revoked, is liable to be restored. The procedural formality as required to be complied within the time frame prescribed in the regulation, even if it is deviated for whatsoever reason beyond the control of the revenue or the Customs House Agent would result into consequences of declaring the entire action invalid if the provision is construed as mandatory. On the other hand, if the provision the construed as directory, the Customs House Agent would be deprived of his licence for considerable long time, if the time schedule is not adhered to the Revenue at its sweet choice would prolong the procedure and which is a likely situation, no attempts would be made to complete the inquiry within the stipulated period.

This is what has weighed in the mind of the High Courts while dealing with the said regulation and holding the same to be mandatory

The catena of judgments on which reliance has been placed to declare the provision as mandatory have referred to the extraordinary delay caused at the instance of the revenue in conducting inquiry against the Customs House Agent, depriving them of their means of livelihood and it was observed that the purpose of prescribed time limit was to safeguard the interest of the Customs Broker and smooth import and export of goods. By relying on a celebrated principle, when a statute prescribes a thing to be done in a particular manner, it must be performed in such a manner, the use of the word “shall” in the Regulation has been construed as mandatory.

With due respect to the finding so recorded in the judgment of the Madras Court in case of Masterstroke Freight Forwarders P. Ltd. v. C.C.(I), Chennai-I, reported in 2016 (332) ELT 300 (Madras) delivered by the Learned Single Judge, the parameters of construing a provision as mandatory or directory, when it deals with a discharge of a public duty and a resultant consequence has not been specifically taken into consideration. The salutary principle, whether statute imposes a public duty and lays down the manner and time within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescription, is a relevant factor for holding such provision only as directory has been completely overlooked. As observed by Justice Denman in Caldow v. Pixell, (1877) 2 CPD 562, “in considering whether the statute is imperative, the balance may be struck between inconvenience or sometime rigidly adhered to, or sometime departure from this direction”. In that case, it was held that where a public officer was directed by statute to perform a duty within a specific time the case is established that the provisions are only directory, as already discussed above. There might be reason why such time limits cannot be adhered to and these reasons may be at times attributable to

the revenue and some time to the Customs house agent. Strict adherence to the said time limit and not making it even slightly flexible would warrant a situation where even one day deviation from the time line would be equally fatal as a delay of one year. This surely is not the intention in framing the Regulation. Undisputedly, the intention is to curb the delay in concluding the inquiries, however, it should not be stretched to an extent where it would defeat the very purpose of the Regulation, being to enforce a regime of discipline in the Customs arena and it would result in letting the miscreant set loose by taking benefit of deviation of the time schedule. The said CESTAT West Zonal Bench, Mumbai in Unison Clearing Pvt. Ltd v. Commissioner of Customs (General), Mumbai (supra) has in detail dealt with the Regulation 22 and has examined whether it has to be construed as mandatory or directory. Relying on catena of judgments delivered by the Hon'ble Apex Court, and specifically in Delhi Air Take Services Pvt. Ltd. and Another v. State of West Bengal and Another, CESTAT has concluded that while deciding whether the time period is directory or mandatory, it would be seen that the purpose of law prescribing it as mandatory and consequently the absence of provisions of consequences in case of non-compliance with the requirement would indicate that the provisions are directory irrespective of use of the word "shall". The CESTAT has concluded that if the time limits are construed as mandatory and the matter is put to an end, the purpose of Regulation would be defeated and so would be the intention behind framing such a Regulation. On the other hand, if there is no consequence stated in the regulation for non-adherence is a time period for conducting the inquiry, the time line cannot be proved to be fatal to the outcome of the inquiry. Based on these observations the Tribunal had held the Regulation is directory in nature. However, in the present judgment which is impugned before us, the CESTAT has taken

a view contrary to its earlier view in Unison Clearing Pvt. Ltd. (supra) and after referring to certain precedents where a view was taken that the regulations are mandatory delivered by the Tribunal itself, the Tribunal was pleased to quash and set aside the impugned order being not sustainable and allowed the appeals. It is to be noted that the Member Judicial (Ramesh Nair) who is a party to the judgment delivered by the said CESTAT in Unison Clearing Pvt. Ltd. v. Commissioner of Customs (General), Mumbai.

15. In view of the aforesaid discussion, the timelimit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line 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 inquiry should be justified by giving reasons and the causes on account of which the timelimit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this timelimit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is “reasonable”. This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.’

setting the tone for, and measure of, evaluating the circumstances in which the timelines are to benchmark as directory or mandatory.

6. Following this, by order² disposing off appeal³ against order⁴ of Principal Commissioner of Customs (General), Mumbai the Tribunal, in *AB Paul & Company v. Principal Commissioner of Customs (General), Mumbai*, held that

‘14. Though the said decision has categorically held that time-lines in the Regulations are to be deemed as ‘directory’, the context is not without significance. It was held that setting aside of revocation, at the appellate level, by resort to ascertainment of conformity with time-lines, would defeat the intent of Regulations that is substantively elaborate in enacting framework for supervisory oversight of customs brokers. Nonetheless, the Hon’ble High Court of Bombay also noted that, without justification for delay in completion of proceedings demonstrated by findings on the contributory negligence of the notice-broker, the licencing authority is not permitted to take shelter behind ‘directory’ nature of the time-lines. Impliedly, the time-lines are deemed to be directory at the appellate stage and an order of detriment under the authority of Regulations is, in circumstances of non-adherence to times lines, not tenable in the absence of justification for delay.

15. The impugned order is clearly bereft of such finding. Learned Authorised Representative has contended that the delay occurred owing to insistence on notice insisting upon cross-examination of their employee; an assertion of right to defence in proceedings is, of itself, not dilatory and, especially, in the light of our finding that no justifiable cause for rejection of cross-examination is available on record. In such

² [final order no. A/85907/2023 dated 2nd June 2023]

³ [customs appeal no. 86451 of 2022]

⁴ [order-in- original no. 11/CAC/PCC(G)/SJ/SBS Adj. dated 13th May 2022]

circumstances, the decision of the Hon'ble High Court of Bombay in re Unison Clearing Pvt Ltd does not come to the assistance of the licencing authority. It is clear that the time-lines specified in regulation 17 of Customs House Broker Licensing Regulations, 2018 had not been adhered to. Consequently, no purpose would be served by directing cross-examination now because that will only approve non-adherence to timelines; we cannot condone that which is not condonable. We also do not find it necessary to delve further into the deviation from the specificity, warranted in show cause notice, by the arrangement of obligations in regulation 10 of Customs Broker Licencing Regulations, 2018.'

7. In addition to the circumstances failing to portray any delay occasioned by dereliction on the part of the customs broker, there is no explanation whatsoever in the impugned order justifying the delay as unavoidable and beyond human control. That is irresponsible discharge of responsibility fastened on the licencing authority in the Regulations and not in accordance with the leeway afforded by Hon'ble High Court of Bombay in *re Unison Clearing Pvt Ltd*.

8. For the above reasons, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 08/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)