

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 41556 of 2016

(All appeals arising out of Order in Original No. 330/2016-AIR dated 30.4.2016 passed by the Commissioner of Customs, Chennai - VII)

Shri Rakesh Ganpatlal Jain

A-6, Jaimala Building,
Liberty Garden, Malad (W)
Mumbai – 400 064.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

Respondent

With

Customs Appeal No. 41559 of 2016

Shri Kiran N. Kothari

5, Laxmi Bhavan, 2nd Floor
Dr. M.B. Raut Road
Dadar (West), Mumbai – 400 028.

Appellant

Vs.

Commissioner of customs

Chennai VII Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

And

Customs Appeal No. 41560 of 2016

Shri Kumar Gautam Shah

A-42, Pranik Garden
Mahavir Nagar, Kandivali (W)
Mumbai – 400 067.

Appellant

Vs.

Commissioner of customs

Chennai VII Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri Anil Balani, Advocate for the Appellants

Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41469-41471/2025

Date of Hearing: 10.07.2025

Date of Decision: 16.12.2025

Per M. Ajit Kumar,

These appeals are filed by the appellants against Order in Original No. 330/2016 dated 30.4.2016-AIR passed by the Commissioner of Customs, Chennai - VII (impugned order).

2. Brief facts of the case are that the Directorate of Revenue Intelligence (DRI), Chennai Zonal Unit on intelligence allegedly found that branded glass chatons were imported in the name of "Artificial Stones" / "Imitation Stones" etc by grossly mis-declaring the item description and value, besides clearing the consignments in the name of fictitious and non-existing Import Export Codes (IECS) through Air Cargo Complex and also through the seaport at Chennai. Investigations made by DRI allegedly revealed that several such consignments were cleared by one Shri A. Santhakumar, proprietor of M/s S.R. Cargo, Chennai. It was further revealed that he had facilitated clearances in the names of seven IECS including M/s Cee Pee Enterprises, M/s M.P Enterprises and M/s S.M. Enterprises. In pursuance bills of entry filed in the names of the said IECs were taken up for investigation and after completion of investigation, DRI, Chennai issued a Show Cause Notice dated 02/07/2015 to the following noticees
1) Shri Sanjay Lakhyani @Kishore Bhai, Rajasthan, 2) M/s S.M. Enterprises, Chennai, 3) M/s M.P Enterprises, Chennai, 4) M/s Cee Pee

Enterprises, Chennai, 5) Shri M. Chandramouli, Chennai, 6) Shri A Santhakumar, Chennai, 7) Shri Kumar Gautam Shah, Mumbai, 8) Shri Rakesh Ganpatial Jain, Mumbai, 9] Shri Ashok Babulal Thacker, Mumbai, 10) Shri Kiran Nyalchand Kothari, Mumbai, 11) M/s The General Shipping and Forwarding Services, Chennai, and 12) M/s. Madras International Shipping, Chennai. The Ld. Adjudicating Authority confirmed the duty demanded along with interest and penalties.

2.1 Aggrieved by the above order, some of the noticees have preferred the present appeals.

3. The learned Counsel Shri Anil Balani appeared for the appellants and Shri Sanjay Kakkar, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Counsel for the appellants stated that;

A) M/s S.M. Enterprises had filed 15 BE's and the same were cleared on payment of duty. Hence M/s S.M. Enterprises is the importer and is liable to pay duty which is short levied or non-levied. Hence the confirmation of demand against the appellant is totally erroneous.

B) The SCN states that the appellant purchased 420 Kgs of glass chaton's having a market value of 12-13 lakhs. They were not concerned with the rest of the goods valued at 6.78 Cr, hence confirmation of duty of Rs 1,63,18,565/- against the appellant is wrong and beyond the scope of the SCN.

C) Duty cannot be confirmed jointly and severally from more than one person and such confirmation in the impugned order is erroneous.

3.2 The Ld. A.R. for revenue has taken us through the impugned order and has reiterated the findings given therein.

4. Having heard the rival contentions and perusing the record we find that an important question of law raised by the appellant is that duty cannot be confirmed jointly and severally from more than one person and such confirmation in the impugned order is erroneous. Being a fundamental issue that has a bearing on the collection of duty, we examine the same first.

5. Joint and several liability makes all parties responsible for paying the entire amount due. That is, if one party is unable to pay, then the others named must pay. However, **Article 265** of the Constitution of India stipulates that "No tax shall be levied or collected except by authority of law." The Article does not define 'law' and the term 'authority of law' must be understood in terms of the other Articles of the Constitution. Article 13(3) provides that "law includes any ordinance, order, by-law, rule, notification, customs or usage having in the territory of India, the regulation, force of law." Furthermore, Article 366(10) defines "existing law" as any law, ordinance, order, by-law, rule, or regulation enacted or established prior to the commencement of the Constitution by any legislative authority or individual empowered to make such law, ordinance, order, by-law, rule, or regulation. The authority of the Parliament and State Legislatures to enact laws is derived from Article 246. Hence it has to be ascertained whether the demand for tax jointly and severally in this case, is being demanded under the authority of law.

6. The Hon'ble Apex Court in **Mathuram Agrawal Vs. State of Madhya Pradesh** [(1999) 8 SCC 667] held that a tax statute, enacted by Parliament or the State Legislatures should clearly and unambiguously convey the three components of tax law i.e. (i) the

subject of the tax, (ii) the **person** who is liable to pay the tax and the (iii) **rate** at which the tax is to be paid. Subsequent judgments of the Hon'ble Supreme Court have added a fourth component/ element i.e. the **measure** or value to which the rate will be applied for computing the liability [See: **Govind Saran Ganga Saran Vs CST** - 1985 Supp SCC 205 (6); **Mathuram Agrawal Vs State of M P** - (1999) 8 SCC 667 (12); **Union of India Vs Mohit Minerals (P) Ltd.** - (2022) 10 SCC 700 (97)]. We are in this case concerned with point (ii) above i.e. determining the person who is liable to pay tax.

7. As stated, above Article 13(3) provides that "law includes any ordinance, order, by-law, rule, notification, customs or usage having in the territory of India, the regulation, force of law." We find that the liability to pay an outstanding amount jointly and severally is not alien to Indian law and jurisprudence. The concept of 'joint and several liability' is a part of various enactments such as:-

- a) **The Indian Contract Act** [Sections 42, 43 and 44 thereof].
- b) **The Indian Partnership Act, 1932** [Section 25].
- c) **The Income Tax Act, 1961**, [Section 188A]

8. Similarly, section 147 of the **Customs Act 1962** though not fixing the liability jointly and severally, allows the dues to be collected from a person other than the actual importer, in certain circumstances as stated in section 147 of the said Act. Hence, while the primary liability to pay the differential duty is on the importer under Section 28 of the Customs Act, but that liability, in certain special circumstances, the demand can be fastened under Section 147 on the '**person**

authorised' expressly or impliedly by the owner/ importer/ exporter of any goods to be his agent.

9. Even as per the **EXIM Policy** relating to Duty Exemption / Remission Schemes, such as the Advance Authorisation scheme, the authorisation holder and co-authorisation holder are jointly and severally liable for the completion of the export obligation. Similarly **Customs Notification** No. 21/2023-CUSTOMS, dated 01.04.2023, (cited only as an example), regarding implementation of Advance Authorisation Scheme under Foreign Trade Policy, states that in relation to the authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of the notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in the notification.

10. We find that the order has not discussed this legal issue and has thus deprived us of the views of the Original Authority on this important point of law. The appeal memorandum also does not contain copies of the documents relied upon in the SCN. We thus feel that this is a fit case to remand the matter for a detailed decision on the legal issue involved and its implication on the merits of the case pertaining to the appellants. A similar stand has been taken by this Tribunal in the case of **Shri Leelaram Arjandas Asudani Vs Commissioner** (Customs), Ahmedabad [ORDER No. A/10307-10314/2017 Dated : 20/01/2017] and **M/S. Rimjhim Ispat Ltd Vs CCE, Kanpur** [2013 (293) E.L.T. 124 (Tri. - Del.)]. The outcome of the action taken against the said orders and decision rendered has not been placed before us. As regards the judgments cited by the appellant on this legal issue we find that in

J.K. Pharma Vs Commissioner — 2004 (166) E.L.T. 407 (Tribunal), the Tribunal found that the dept had not decided the issue of burden of proof as to fulfillment of export obligation correctly as also the issue related to reversal of Modvat credit. As regards the demand for duty jointly and severally, there is no detailed discussion on the legal issues involved. The order states as under:

“5. The demand under Section 28 of the Custom Act has to be determined by the proper officer, who *vide* Section 28(2) is required to determine the amount of duty and interest due from such person. Therefore, the determination as arrived at jointly and severally are more than one person cannot be sustained.”

It does not state why the word ‘person’ has to be treated in the singular. When words are not defined in the Customs Act or in any Central Act or Regulations its definition can be ascertained from THE GENERAL CLAUSES ACT, 1897. The said act defines ‘person’ under Section 3(42) as:

“(42) “**person**” shall include any company or association or body of individuals, whether incorporated or not;”

Hence a person includes a body of individuals, whether incorporated or not. A decision is available as a precedent only if it decides a question of law. The Hon’ble Supreme Court in its judgment in **Secunderabad Club Vs CIT**, [Civil Appeal Nos. 5195-5201 of 2012, Dated: August 17, 2023] examined the issue of precedent and stated as under;

“14. . . . According to the well-settled theory of precedents, every decision contains three basic ingredients:

- (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;
- (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. **However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision.** This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.”

(emphasis added)

Hence the decision of the Tribunal being based on a host of issues and also by not discussing the issue of demand of duty jointly and severally in depth, has limited precedential value in this case. The Order in **Famous Textiles Vs Commissioner** [2005 (191) E.L.T. 592 (Tri.-Mumbai)] and **BAJAJ TRADING Vs COMMISSIONER OF CUS. (E.P.), MUMBAI** [2006 (206) E.L.T. 537 (Tri. - Mumbai)], are interim orders and do not have a precedential value. The Order in the case of **PRO-FASHIONAL COMPUTERS Vs COMMISSIONER OF CENTRAL EXCISE, MUMBAI-V** [2008 (230) E.L.T. 612 (Tri. - Mumbai)], remands the matter to the Original Authority. The Order in **Sree Aravindh Steels Ltd. Vs Commissioner** [2007 (216) E.L.T. 332 (Tribunal)], pertains to a Central Excise matter and is hence not relevant to this issue.

11. We accordingly set aside the portion of the impugned order pertaining to the appellants and remand the matter to the Original Authority to decide the issue afresh in denovo proceedings. The appellants are at liberty to advance arguments both orally and in writing on law and facts. All contentions are left open. The appellants should also co-operate with the adjudicating authority in completing

the process expeditiously and in any case within ninety days of receipt of this order. The appellants are eligible for consequential relief, if any, as per law. The appeals are disposed of on the aforesaid terms.

(Order pronounced in open court on 16.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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