CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – I

CUSTOMS APPEAL NO. 50422 OF 2019

[Arising out of Order-in-Original No. 27/2018 dated 11.10.2018 passed by the Commissioner of Customs (Imports), ICD, Tughlakabad New Delhi]

RAJESH TREHAN **......APPELLANT**
Ground floor, 28 Regurpura
Arora Arcade, Padam Singh Marg
Karolbagh, New Delhi

VERSUS

COMMISSIONER OF CUSTOMS (IMPORTS)… RESPONDENT
Inland Container Depot
Tughlakabad
New Delhi

APPEARANCE:
Shri Devesh Tripathi, Advocate for the Appellant
Shri Shiv Shankar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 05.02.2026
DATE OF DECISION: 09/03/2026

FINAL ORDER NO. 50323 /2026

P V SUBBA RAO

The Order dated 11.10.2018 passed by the Commissioner[1] in the de novo proceedings pursuant to the remand order of this Tribunal in the first round of litigation by Final Order No. 54056/2017 dated 16.6.2017 in Customs Appeal No. 50689 of 2017 is assailed by Shri Rajesh Trehan[2] in this appeal. The relevant

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1 Impugned order
2 Appellant

portion of the Final Order of this Tribunal in the first round of litigation is reproduced below:

> "5. Admittedly, the duty demand has been confirmed against two persons, namely, Shri Rajesh Trehan and Shri Harish Mohindru. Apparently, such course of action is not tenable. **The importer has to be identified and the duty liability could not be fastened without identification of importer.** Further, in order to fulfil the requirement of principles of natural justice, all the relied upon documents are to be made available to the noticees. Without rendering any opinion on the merits of the case, we set aside the impugned order and remand the case back to the original authority for fresh decision after giving adequate opportunity to the noticees to present their case. Since the consignments are lying with the Department, the authorities may take an early decision.
>
> 6. In the result, the appeal is allowed by way of remand. Miscellaneous Application also stands disposed of accordingly."

(emphasis supplied)

2. The facts of the case are that the officers of the Directorate of Revenue Intelligence[3] received intelligence that some importers were purchasing complete LED TVs in the overseas market and then removing some parts such as Master cards, Power Supply units and RF cards and importing such LED TVs at low prices and were importing the remaining goods along with remote control, etc. separately in the name of others. After importing they were assembling them together to make the complete LED TVs and selling them in the market.

3. Acting on this intelligence, they searched the premises of the appellant and found that the appellant had purchased the LED Panels from M/s. Siya Ram Sales Corporation and M/s. ABC

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3 DRI

International and other parts from M/s. Mahalaxmi Enterprises and was assembling them together to make complete TVs.

4. After completing the investigation, Show Cause Notice dated 26.9.2015[4] was issued by DRI demanding duty with interest and proposing penalties. The Commissioner decided the proposals in the SCN confirming demand of duty of Rs. 9,76,424/- under section 28(4) of the Customs Act, 1962[5] along with interest under section 28AA on the Act from Shri Rajesh Trehan and Shri Harish Mohindru.

5. On appeal, this Tribunal by the final order dated 16.6.2017, remanded the matter to the Commissioner to identify who is the importer and decide the matter.

6. The Commissioner has, in the order impugned in this appeal, confirmed the demand of duty with interest against the appellant Shri Rajesh Trehan.

Submissions of the appellant

7. Learned counsel for the appellant submits that undisputedly, the appellant had not imported either the LED TV panels or the other goods. He purchased the goods from others as indicated in the SCN itself and then assembled them. Duty cannot, therefore, be demanded from him.

8. He submits that the allegation is that the appellant and Shri Harish Mohindru were the masterminds and principal conspirators

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4 SCN
5 Act

for evasion of Customs duty by importing parts of LED TV and panels separately and reassembling them in India.

9. He further submits that the SCN itself was defective as it proposed charging duty from two persons and this deficiency cannot be removed by demanding differential duty from the appellant alone. This charge is based on various statements recorded by the DRI during investigation. However, duty cannot be charged from the subsequent buyer of imported goods. Consequently, the demand of duty and interest and the penalties deserve to be set aside.

Submissions of Revenue

10. Learned authorised representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference.

Findings

11. We find that section 28 of the Act provides for issuing a notice to the person chargeable with duty or interest. It does not provide for issuing notice to anyone else. The relevant portion of this section reads as follows:

> **"Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -**
>
> (1) **Where any duty has not been levied or not paid** or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, **for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-**

(a) **the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid** or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

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(4) **Where any duty has not been levied or not paid** or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, **by reason of,-**

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, **the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid** or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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12. The question which will now arise is who is that person who is chargeable with duty. The charge of any duty or tax can be on an individual or on the goods or property. As per section 12 of the Customs Act, duty is chargeable on the goods imported or exported out of India. The section further clarifies that the charge would also apply to goods owned by the Government as it applies to other goods and it reads as follows:

"Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, **duties of customs shall be levied at such rates** as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, **on goods imported into, or exported from, India.**

> (2) The provisions of sub-section (1) **shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government**."

(emphasis supplied)

13. Since the charge is on the goods, it has to be paid by the person who owns and clears the goods through Customs. Although import into India is completed as soon as the goods enter the Indian territorial waters, collection of duty is deferred until the goods are cleared for home consumption. If any transactions take place even after the goods have been imported into India and are lying in the port, ICD, CFS or the Customs warehouse, such transactions are treated as 'high sea sales' and are not charged to any duty. At times, the goods change multiple hands- A sells to B who sells to C who in turn sells to D- before the goods are cleared for home consumption. The person who seeks to clear the goods for home consumption has to file the Bill of Entry under section 46 of the Act, self-assess duty under section 17 of the Act and pay it and if duty is re-assessed by the proper officer such person has to pay the duty accordingly. After assessment is completed and duty is paid, the proper officer issues an order permitting their clearance for home consumption under section 47 of the Act- a process commonly called 'customs out of charge'. Relevant portions of these sections are reproduced below:

> **"Section 17. Assessment of duty. -**
> (1) **An importer entering any imported goods under section 46** , or an exporter entering any export goods under section 50 **, shall, save as otherwise provided in section 85 , self-assess the duty**, if any, leviable on such goods.

> (2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
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> **Section 46. Entry of goods on importation. - (1) The importer of any goods**, other than goods intended for transit or transhipment, **shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption** or warehousing in such form and manner as may be prescribed:
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> **Section 47. Clearance of goods for home consumption. -**
> (1) **Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty**, if any, assessed thereon and any charges payable under this Act in respect of the same, **the proper officer may make an order permitting clearance of the goods for home consumption**….."

14. A reading of the above sections shows that the person who owns the goods and seeks their clearance for home consumption is the one who must self-assess duty, file the Bill of Entry and obtain clearance. The next question which would arise is what will happen after the goods are cleared for home consumption.

15. Section 2 (14), (25) & (26) clarify this position. Once the duty is paid and goods are cleared for home consumption, they cease to be imported goods and the person ceases to be the importer and the goods cease to be dutiable goods. Relevant portions of this section are reproduced below:

> "2. **Definitions**.—In this Act, unless the context otherwise requires,—
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> (14) '**dutiable good**s' means any goods which are chargeable to duty and **on which duty has not been paid;**
>
> (25) '**imported goods'** means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption**;
>
> (26) '**importer'**, in relation to any goods at any time **between their importation and the time when they are cleared for**

> **home consumption, includes any owner,** or any person holding himself out to be the importer;"

16. Thus, once the goods are cleared for home consumption, the nature of the goods changes and they will no longer be imported goods and the owner of the goods will also not be the importer. There cannot be any further assessment of duty under section 17 on the goods. However, if duty was short paid, a notice under section 28 can be issued to the person chargeable with duty to recover the duty so short paid. The person chargeable to such duty will be the one who has short paid the duty in the first place, i.e., it is the person who filed the Bill of Entry and got the goods cleared for home consumption. If after clearance, that person, in turn, sold the goods to someone else, that buyer cannot be liable to pay duty because he did not import their goods or clear them for home consumption or short paid duty. The definition of 'importer' includes the owner of the goods only between the time of the import and the clearance for home consumption. The appellant, in this case, is such a buyer of goods which were already cleared for home consumption.

17. The case of the department is that the appellant had masterminded all the entire imports which had taken place through others and hence he was liable to pay duty. During the relevant period, there was no provision to charge someone who indirectly controls the import with duty treating such a person as the importer. The Act was amended from 31.3.2017 and the concept of beneficial owner was introduced by inserting Section 2(3A) and

amending section 2(26) of the Act to include beneficial owners. These are reproduced below:

> “(3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;”
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> 2(26)"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] [Substituted 'any owner' by Finance Act, 2017 (Act No. 7 of 2017), dated 31.3.2017.] or any person holding himself out to be the importer;

18. The SCN in this case was issued before 31.3.2017 when there was no concept of beneficial owner in the Act. Therefore, the demand of duty on the appellant who, admittedly, only bought the goods after they have been cleared for home consumption cannot be sustained.

19. We now proceed to examine if differential duty could have been demanded from the importer in the manner it has been demanded in the SCN and confirmed in the impugned order.

20. In every tax or duty, assessment is done within some limits, which forms a sort of unit of assessment. For instance, income tax is assessed for each Financial Year. The income earned in one financial year cannot be combined with the income earned in the next financial year or in the previous year to assesss tax. If one has a large income during one financial year and much less income in the next financial year, it is not open to the assessee to ask that the income in the first year may be treated as income in the next year so as to fall under a lower tax slab and reduce the tax liability.

Conversely, the assessing officer cannot add the income in the subsequent year (when the income is less) to the current year (when the income is more) and demand more tax. Without such clear demarcation, tax/duty assessments will become impossible.

21. In case of Customs, this unit of assessment is the Bill of Entry. Each Bill of Entry is an assessment in itself and is appealable by both sides. Goods imported in each Bill of Entry must be classified, valued and assessed to duty as they are imported. Each Bill of Entry is an entry made under section 46, a self-assessment by the importer and re-assessment by the proper officer under section 17 and a clearance under section 47 is given in respect of each Bill of Entry. Once the clearance under section 47 is given, the goods imported under that Bill of Entry cease to be imported goods.

22. The goods imported under one Bill of Entry cannot be combined with the goods imported under another Bill of Entry and both cannot be classified, valued or assessed together. If some goods are imported under one Bill of Entry and some other goods are imported in another Bill of Entry, it is possible that if both goods are looked at together, they may constitute another article in CKD or SKD condition but there is no provision under the Customs Act to assess two or more Bills of Entry together. The only exception is the Project Imports which is a special option given to the importer to get all the goods imported under the project under a single heading 9801.

23. The SCN was issued under the mistaken belief that the LCD panels imported under some Bills of Entry by some importers and other parts imported under some other Bills of Entry by some other importers can be considered together when they were sold to the appellant after clearance and duty re-assessed treating all the these goods together.

24. The concern of the department appears to be that instead of importing complete LCD TVs, the panels are being imported separately and other parts are being imported separately by other importers and they are being assembled to form complete LCD TVs. This, we must point out, is nothing but tax planning. Tax planning is generally associated with direct tax planning but planning of Customs duties is also possible.

25. A general principle followed while deciding tariffs is to charge lowest rates of duty on the raw materials, medium rates of duty on intermediate products and highest rates of duty on finished products. Such an approach is expected to encourage local industries to increasingly carry out assembly and manufacture in the country instead of importing finished products. So, if any importer decides to import intermediate goods and assemble them in India instead of importing finished goods, he is only taking advantage of the legal position. It is possible that in the structuring of customs duties, opportunities may arise to importers and businesses to reduce their duty liability by structuring the imports appropriately even if the indigenous work of assembly may not be

significant. Taking advantage of tariff structure and importing goods appropriately is only smart customs duty planning and it is perfectly legal. This was explained by Justice G P Singh in his **Principles of Statutory Interpretation**[6] as follows:

> "It is permissible to evade an Act of Parliament in the sense that a person may not do that which the Act prohibits but he is free to do anything which though equally advantageous to him as that which is prohibited is nevertheless outside the prohibition, penalty or burden imposed by the Act."[7]

26. Tax laws do not regulate how one has to do business. One may carry out his business as he pleases and in so arranging his affairs, reduce the liability of tax or duty. It is done by most individuals and firms with respect to income tax. One can equally well plan his affairs so as to reduce the customs duty liability. There is nothing illegal or wrong about it. Whether one wants to import finished goods or import parts and assemble them in India, whether one wants to import all parts or buy either imported or Indian made parts, are all business decisions. Anyone can make these decisions and perhaps, in the process reduce one's duty liability. Assessment has to be for each Bill of Entry and there is no power under the Act to assess more than one Bill of Entry together.

27. To sum up:

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6 G P Singh, Principles of Statutory Interpretation 15th edition
7 Ibid, page 641, citing Yorkshire Railway Wagon Co. v Maclure (1882) 21 Ch D 309

a. The appellant is not the importer of the goods in the facts of the case.

b. No notice under section 28 of the Act could have been served on the appellant demanding duty because the appellant was not the one who paid duty in the first place;

c. Goods have to be assessed in each Bill of Entry and the impugned order determining the classification of duty considering the goods imported under various Bills of Entry is without any authority of law;

d. If one imports parts under different Bills of Entry instead of importing the entire set together so as to reduce tax liability, it is only smart planning and there is nothing illegal or inappropriate about it.

28. The impugned order, therefore, deserves to be set aside and is set aside. The appeal is accordingly allowed.

[Order pronounced in the open court on **09/03/2026**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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