

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

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 85945 OF 2020
WITH
CROSS-OBJECTION NO: 85419 OF 2020
(on behalf of respondent)**

[Arising out of Order-in-Appeal No: MUM-CUSTOM-APSC-APP-336/20-21 dated 11th September 2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III.]

Vinay Brij Singh

Flat No. 6556 Sector CV-6, Vasant Kunj
New Delhi - 110070

... Appellant

versus

Commissioner of Customs (APSC)

Avas Corporate Building, Marol Naka, Andheri (E)
Mumbai - 400059

...Respondent

APPEARANCE:

Shri Vipin Jain and Ms Ananya Maitin, Advocates for appellant

Shri PRV Ramanan, Special Counsel for respondent

**WITH
CUSTOMS APPEAL NO: 85855 OF 2020
WITH
CROSS-OBJECTION NO: 85052 OF 2021
(on behalf of respondent)**

[Arising out of Order-in-Appeal No: MUM-CUSTOM-APSC-APP-339/20-21 dated 15th September 2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone– III.]

Jitendra Bahadur Singh Patel

901 Central GST Residential Complex, E-Block, BKC
Bandra East, Mumbai - 400051

... Appellant

versus

Commissioner of Customs (APSC)

Awas Corporate Point, Makwana Lane, Marol Naka
Andheri – Kurla Road, Andheri East, Mumbai-400059

...Respondent

WITH
CUSTOMS APPEAL NO: 86126 OF 2020
WITH
CROSS-OBJECTION NO: 85053 OF 2021
(on behalf of respondent)

[Arising out of Order-in-Appeal No: MUM-CUSTIM-APSC-APP-344/20-21 dated 16th September 2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone– III.]

C Y Manikanhaiya

C/o Chief Commissioner office, Hyderabad Zone
GST Bhavan, LBS Road, Basheet Bagh
Hyderabad – 500004

... *Appellant*

versus

Commissioner of Customs (APSC)

Awas Corporate Point, Makwana Lane, Marol Naka
Andheri – Kurla Road, Andheri East, Mumbai-400059

...*Respondent*

AND
CUSTOMS APPEAL NO: 86127 OF 2020
WITH
CROSS-OBJECTION NO: 85051 OF 2021
(on behalf of respondent)

[Arising out of Order-in-Appeal No: MUM-CUSTIM-APSC-APP-340/20-21 dated 15th September 2020 passed by the Commissioner of Customs (Appeals), Mumbai Zone– III.]

Ashiquzzaman

O/o the Commissioner of CGST & Central Excise
Rourkela Commissionerate, KK-42, Civil Township
Rourkela, Odisha - 769012

... *Appellant*

versus

Commissioner of Customs (APSC)

Awas Corporate Point, Makwana Lane, Marol Naka
Andheri – Kurla Road, Andheri East, Mumbai-400059

...*Respondent*

APPEARANCE:

Shri Sujay Kantawala, Advocate for appellants

Shri PRV Ramanan, Special Counsel for respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85523-85526/2025

DATE OF HEARING:	24/09/2024
DATE OF DECISION:	24/03/2025

PER: C J MATHEW

The four individuals before us, in the persons of S/Shri Vinay Brij Singh, Jitendra Bahadur Singh Patel, CY Manikanhaiya and Azhiqussaman, are not among the aggrieved that are normally at the doors of the Tribunal. Indeed, the shelter that they did ask for and the relief that, by these appeals, are sought have nothing to do with 'personal penalty' usually visited upon individuals of one sort or another; nor are these about the occasional individual fastened with liability to duties of customs. On the contrary, neither has any penalty yet been imposed, nor is any duty liability going to be fastened, on them. All four are apprehensive that there is every possibility, or, more probably, all likelihood of, having to knock at the doors of the Tribunal someday. Because, were this premonition but a figment of their imagination the adjudicating authority, who is yet to be, would not have turned down the plea of limitation, built into section 155 of Customs Act, 1962 and could have been resorted to, as bar to continuation of proceedings arising from notice proposing imposition of penalty under section 112 of Customs Act, 1962 on them. And because, in the same vein, a conclusion was drawn, wrongly and on a plea not made, that the impugned activities could not be claimed as *bona fide* discharge of official duties. Though the orders impugned here are different for each appellant, the disposal having been identical, the appeals are disposed off by common decision and we shall be referring to only one set thereof for convenience.

2. The appellants are appointees of Government of India; indeed, some by the President of the Republic and being one of

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- (c) *Principal Commissioners of Customs;*
- (d) *Commissioners of Customs;*
- (e) *Commissioners of Customs (Appeals);*
- (f) *Joint Commissioners of Customs;*
- (g) *Deputy Commissioners of Customs;*
- (h) *Assistant Commissioner of Customs;*
- (i) *such other class of officers of customs as may be appointed for the purposes of this Act.’*

in section 3 of Customs Act, 1962, constituting the hierarchy of ‘officers of customs’ therein, from among whom are designated ‘proper officers’, of one sort or another, empowered at customs stations for assessment of goods to duties of customs, clearance of imported and export goods, prevention of entry of goods prohibited in the country, recovery of duties not paid or short-paid, and such like, in the several machinery provisions in Customs Act, 1962. And, they stand charged with allegation of having been complicit in breach of law that rendered goods belonging to others liable to confiscation under section 111 of Customs Act, 1962. Neither the alleged respective roles nor the verity of the facts and circumstances are within the scope of resolution in the present appeals because those aspects are yet to be adjudicated upon. The adjudicating authority, at the preliminary stage, ruled that proceedings are not barred for want of statutory limitation, either of jurisdiction or time, and the dispute before us is about such continuation being legal and proper. Absent context, whether it be factual matrix or

regular adjudicatory determining,

‘155. Protection of action taken under the Act. – (1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.’

in Customs Act, 1962, may well have been legislatively intended to be as claimed by the appellants or, *per contra*, may not. Either way, an appellate authority, and, that too, the second, should not let facts jaundice view of the findings through the prism of enacted law and judicial precedent except to the extent that lower authorities have touched upon those. We dare say that the first appellate authority was not correct in letting facts, yet to be established in adjudication, influence the outcome of appeal. In such circumstances, that there are oddities does not surprise.

3. The first of the oddities is that the adjudicating authority has, *vis-à-vis* the findings against the appellants, forsaken the privilege of *functus officio* even while, and because of, consciously ruling itself competent to advance proceedings on merit. But in choosing not to, the proceedings have been ground to halt, *albeit* temporarily, till this appeal on statutory competence is

adjudged and, probably, even beyond should either side press further for reversal of decision resolving the dispute in these appeals. Oddly so, even an order¹ of first appellate authority, affirming the view that the statute does not offer protection to its statutory creations, did not see it fit to be at one with, and thus anticipate the contention of Learned Special Counsel for respondent-Commissioner of Customs, that the adjudicating authority should have proceeded to adjudicate on the proposals in the show cause notice, which was but partially, and kept appellate authorities from visiting a historically acknowledged non-issue. And, thereby, the second oddity is the unleashing of the expectation of the appellants herein of ever having to face the adjudicator again, owing to section 155 of Customs Act, 1962 which was pressed into service as a threshold bar on proceedings in quasi-judicial proceedings, on to the Tribunal for, and rarely occurring, determination of a point exclusively of law. As one of those in the aforementioned enumeration in section 3 of Customs Act, 1962, the adjudicating authority, as well as the first appellate authority, are invested in such determination that, otherwise, may well remain obscured in disputations on merits of completed adjudication. The conflicted adjudicating, and first appellate, authority found themselves to be in conflict with their own colleagues on the one hand and the investigation agency on the other hand – a very hard place for quasi-judicial authorities to find themselves stranded at - offering none of solace as having genesis in overt complicity, as stemming from executive policy formulation by government or as being of routine occurrence in adjudicatory

¹ [order-in-appeal no. MUM-CUSTOMS-APSC-APP-336/20-21 dated 11th September 2020]

exercises.

4. That this ‘easy flipping’ occurred to, and was seized upon by, lower authorities should not surprise for, among the appellants, is a Commissioner of Customs, who, hierarchically, not being inferior to the appellate, and, certainly, superior to the original, authority and, notwithstanding such exalted position, has had the disposal of his fate, his reputation and his future placed in the hands of not only a junior but a subordinate. That, in less egregious circumstances, is not gracious let alone in a ‘hierarchy conscious’ civil service and, even more terrifyingly, a uniformed one at that. In line with settled law and long-standing convention of disciplinary proceedings, which adjudicating and present noticees are all subject to, ‘fact-finding’ enquiry is entrusted to one no less equal and final call taken by no less than the appointing authority. That may not be feasible here owing to statutory constraints but the very portrayal of empowered hierarchy in section 3 of Customs Act, 1962, coupled with the all too foreseeable difficulty which the adjudicating authority would have to deal with that the Central Board of Indirect Taxes & Customs (CBIC) could not have been oblivious of, should have prompted raising of the level of adjudication. A responsible disposal of the notice could, thus, be expected and was even probable.

5. If only the horns of dilemma were just two, the orthodox alternatives, viz., taking the horns for brazenly leaping over or passing unobtrusively between them, would suffice but the unorthodoxy in the scope of this

provision of law having remained indeterminate for over six decades since enactment of Customs Act, 1962, increases the number of horns. So the original authority 'threw sand in the eye', so to speak, and the first appellate authority attempted to 'sing the bull to sleep', metaphorically. The last of the of three neo-classical options, *i.e.*, refusing to enter the arena, is not a luxury that we can contemplate let alone indulge in. So to the task we turn.

6. Within the restrictive framework available to us, and for the purposes of dealing with the grounds of appeal, it suffices to take note that the proceedings pertain to alleged breach of stipulations in Customs Act, 1962, in the import of fourteen consignments of 'rough diamonds' by M/s Antique Exim Private Limited and M/s Tanman Jewels Private Limited, that were placed on notice for alleged overvaluation and the four officers of customs, at Airport Special Cargo (APSC) Commissionerate, who were concerned, directly or indirectly, with assessment thereof at the Precious Cargo Customs Clearance Centre (PCCCC) of Bharat Diamond Bourse (BDB), Mumbai, were also included as noticees for imposition of penalties under section 112 and section 114AA of Customs Act, 1962 for their respective roles in facilitating smuggling of goods. In response to the contention that preliminaries set out in section 155(2) of Customs Act, 1962 had not been observed, the adjudicating Additional Commissioner of Customs held that

'2. it is not a case where the officers have done something in discharge of normal course of their assigned works and the officers/ex officers of Customs who have been made noticees in the present Show Cause Notice cannot claim their actions as purported to be done in pursuance of this act or in good faith intended or done.

3. have been attempted to be cleared by way of conspiracy which cannot be claimed to be done in pursuance of this act (sic) or in good faith intended or done.

xxxx

5. In view of the above, it is informed to you that the case is not for allowing protection under Section 155 (2) of the Customs Act as claimed by you being devoid of merit ’

7. Commissioner of Customs (Appeals), Mumbai – III, in appeal of Shri Vinay Brij Singh contending erroneous disposal of the claim, for coverage under section 155(2) of Customs Act, 1962 - setting limitation, of both procedure and time, on proceedings – for not having been placed notice at least a month prior to initiation of proceedings and certainly for the proceedings not having commenced within three months of accrual of cause, disposed off the preliminary challenge with erroneous reference to another, and mutually exclusive, absolute injunction from being enjoined in specific proceedings in relation to specified acts, as well as inconsistency with judicial determination by the Tribunal in *Commissioner of Customs v. MI Khan* [2000 (120) ELT 542 (Tribunal)] and in *Commissioner of Central Excise, Hyderabad-II v. Rajiv Kumar Agarwal* [2007 (217) ELT 392 (Tri-Bang)], with the order² noting that

‘10..... appellant has been granted time to reply to the said notice, an opportunity which can be availed by him for putting forth his best defence and subsequently, the appellant would also be granted an opportunity to be heard in person, if he so desires. Further, the adjudicating authority is required to take the submissions of the appellant into consideration before passing any order. Thus the principles of natural justice will be met and appellant will be granted all possible opportunities under the law for redressal of his grievances. I find that issuance of a SCN is the first step for

² [order-in-appeal no. MUM-CUSTOM-APSC-APP-336/20-21 dated 11th September 2020]

adjudication proceeding to follow, wherein enough safeguards for taking care of principles of natural justice are stipulated. Further as the nomenclature goes, show cause notice is nothing but a notice of the adjudication proceedings to follow. Therefore, in my view, the requirements of Section 155(2) are expressly taken care of in the adjudication proceedings. Hence I observe that the protection granted in Section 155(2) of the Customs Act, 1962 does not seem to be vitiated on the grounds of limitation, as prayed by the appellant.'

before going on to conclude that there was no reason to interfere with the ongoing process and to categorically uphold the order passed by the lower authority. Similar was the outcome in appeals of Shri Jitendra Bahadur Singh Patel³, Shri CY Manikanhaiya⁴ and Shri Azhiqussaman⁵ owing to which the challenges thereof are taken up together for disposal. Effectively, the first appellate authority subordinated the specific, and pre-proceedings, safeguards in section 155(2) of Customs Act, 1962 to the umbrella of principles of natural justice governing the proceedings itself and suggestively hinted that 'proceeding' therein was the adjudication itself.

8. Learned Counsel for appellants relied upon the decision of the Hon'ble High Court of Kerala in *CC Baby and Others v. Central Bureau of Investigation [MANU/KE/1507/2020]* and in *Public Prosecutor, Madras v. R Raju [1978 (2) ELT (J410) (SC)]* for contending that acting in good faith was not relevant to section 155(2) of Customs Act, 1962. It was pointed out that other adjudicating authorities had been compliant with the procedural requirement as was seen in notice⁶ issued to an Inspector of Customs at

³ [order-in-appeal no. MUM-CUSTOM-APSC-APP-339/20-21 dated 15th September 2020]

⁴ [order-in-appeal no. MUM-CUSTOM-APSC-APP-344/20-21 dated 16th September 2020]

⁵ [order-in-appeal no. MUM-CUSTOM-APSC-APP-340/20-21 dated 15th September 2020]

⁶ [CUS/SIIB/OFF/85/2021-SIIB-O/o-Commr-Cus-Ludhiana dated 6th July 2022]

Chandigarh.

9. Learned Special Counsel responded by placing reliance on the decision⁷ of the Hon'ble Supreme Court on immunity from 'good faith', though in the context of Goods and Service Tax Act, 2017, in *State of Gujarat v. Paresh Nathalal Chauhan* [(2024) 3 SCR 1141],

10. From the sparseness of judicial precedent as far as application of section 155 of Customs Act, 1962 in quasi-judicial action is concerned, it would appear that such adjudication proceedings, encompassing customs officers, is a recent phenomenon and the rarity of resort in the several decades past is a telling measure of either increasing complicity of officials or unrestrained resort by investigation and, with both from the same stock, is not a good reflection of either. It is of concern that increasing resort may not always be in public interest and, negation at appellate stage notwithstanding, is as good as continuation of damage commenced against officers, as individuals, and, as common weal, to public interest. Customs Act, 1962 offers deployment of section 136 and well as section 132 – corresponding to the charges here – for prosecuting officers of customs but, as is evident, that would be subject to judicial sieve from the very beginning and neither to be entered into lightly nor retreated from hastily. That the flexibility of quasi-judicial proceedings makes for neither accountability nor responsibility, especially in confirming proposals in show cause notices, and evaluation of being legal and proper taking its own time does invite opportunities for

⁷ [Order dated 12th March 2024 in appeal from SLP (C) no 666/2021]

misuse of, or undeliberated recourse to, such proceedings. An assessee, in such circumstances, is, doubtlessly, put to inconvenience but does not impede continued privilege of import and export while the officer is stigmatized till the discharge occurs, if it does at all, and even beyond. And if that future is contingent on the motives and perception of not only a single individual but a 'fellow worker', at that, a 'worm in the apple' is ever a possibility. Therefore, if the absence of bar on proceedings against officers under section 124 of Customs Act, 1962 or the absence of provision for such proceedings unlike for prosecution is perceived as enablement, then it is but a corollary that the absence of neutral adjudgement as well as judicial protection should then bring forth such safeguards as the enabling law contains. We do not say that this present proceedings are one of private interest but unfettered resort, in this or any other circumstances, with no accountability is but law perverted and justice anaesthetized. And hence the need to sift each such proceedings through safeguards incorporated in the statute. More so, as the test of preponderance prevails in adjudication proceedings, as opposed to test of convincing proofs in prosecution, to render officers of customs to vulnerability that disincentivizes public service.

11. In disciplinary proceedings which also serve like purpose, if ill-intentioned, 'fact finding' by inquiry authority, application of mind of appointing authority and consultation with constitutional bodies assures of 'public interest' having been the touchstone. In prosecutions, whether under Customs Act, 1962 or other laws governing 'public servants', instituting of proceedings is preceded by statutorily mandated deliberations that involve

more than the mind of the investigator in setting, a virtually unretractable, process in motion. The question that signifies is legislative intent, even by residual provision, to safeguard officers and compliance with the safeguard mechanism in every action. Learned Special Counsel has, indirectly, made the plea that the enactment was not intended to be brought into play in adjudication proceedings owing to lack of specific reference to context. He further submitted that the only detriment from adjudication proceedings are only penalties and which, in any case, falls within the scope of appellate remedies.

12. We find ourselves unable to concur with the submissions of Learned Special Counsel for several reasons and not the least of which stems from our exposition *supra* on alternative recourse available to the Central Government. And, more especially, as absence of specific inclusion of ‘officers of customs’ in section 112 and section 114AA of Customs Act, 1962 is no less akin to absence of disbarment of one sort of proceedings against ‘officers of customs’ from the safeguard ambit of section 155 of Customs Act, 1962. The law is not an instrument of convenience; flexibility, appropriated for invoking jurisdiction from one provision to the exclusion of other, is nothing but encroachment unless legitimized by good grace in accepting restrictions implicit in the other. The absence of judicial rulings, except the few and of recent vintage, is not an indication that the present appellants, finding themselves in this predicament, are clutching at mere straws unless it can be shown that such proceedings through adjudication are, statistically, a norm and not deviation. Indeed, Learned Special Counsel, in

response to a direct query, was unable to substantiate so. The past may, no doubt, a guide to acceptability of legislative intent but, in relation to penalties consequent upon quasi-judicial proceedings under taxing statutes, which, characteristically, are less of 'third person' institutional decision and more of 'first person' determination with behavioural pattern of individualism, reliance on such, and limited to a few, as guide is fraught with pitfalls. Increasing resort to insertion of officers in adjudication proceedings, and, that too, from investigator-driven and investigator-ridden activism, without safeguards has no place in jurisdictions that have elevated rule of law to way of life. The safeguards, enacted at the very beginning of the law, pre-dates neutral appellate remedy by a good couple of decades and, hence, the argument that such remedies stultify legislative intent is not tenable. More so, as legislative sanction accorded for instituting appellate remedy, through newly minted Tribunal and through the constitutional courts, in 1980 did not consider it necessary to exclude the safeguard enacted in 1962. Section 155 of Customs Act, 1962 are intended as safeguards and are of no less significance to adjudication proceedings.

13. From a plain reading of section 155 of Customs Act, 1962, as we must owing to infrequency of resort depriving us of judicial enlightenment and because the lower authorities - similarly situated - have ventured to deal with the issue sketchily, it would appear that the first provision is legislative assertion of assurance that

'....anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations'

is protected from suits, prosecutions and legal proceedings – which the present action may not be – and, in the absence of provisioning for preceding ‘green signal’, are left to the courts of jurisdictional competence to deliberate and decide at the threshold should such be raised in defence of an accused. It appears to be of deliberated design, too, for the Central Government too is safeguarded by adjudgment by an independent organ of the State. And that being subject to merit review, binding of legislative mandate on a neutral institution is, even if not optimal, best safeguard against arbitrariness and misuse. The other

‘...against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause’

differently phrased about the proceedings – not excluding such as the one before us – affords protection to the very same three and, even if not absolute, as the first, through procedural pre-requisite and deadlines. That would appear also to be of deliberate design to ensure diligence on the part of customs authorities which may be deviated from only at the cost of non-compliance and inaction. Every proceeding in which officers of customs are noticees is, therefore, bound within legislated safeguards and responsibility. It was necessary to place the appellants herein on notice of proposal to proceed against them. That, patently, has not been fulfilled and the dismissal of their plea has fallen short in answering the claim of appellants that ‘or’ must be read as ‘and’, which, if held, will be fatal to the proceedings, as well

as on the claim that limitation has kicked in by sheer efflux of time.

14. The original authority, with determination of absence of ‘good faith’ in acts of omission and commission on the part of the appellants, has skirted the template of section 155(2) of Customs Act, 1962 which lacks that *motif*. The finding is perverse for not only having invoked a test which is in the preserve of judiciary for acceptance of jurisdiction by evaluation of acts for ‘good faith’ at the threshold in suits, prosecution or other legal proceedings against Central Government, officers of the Government or local authorities but also by implicit acceptance of safeguards as extending to adjudications, by having ventured upon the test of ‘good faith’ even while avoiding the facts of the dispute necessary to decide the ingress of limitation. The distinguishment of the two may be appreciated from the deployment of ‘lies’, ‘suits’, ‘legal proceedings’ and ‘good faith’ in one and from ‘proceeding’, ‘commenced’ and time frames stipulated in the other. On that being pressed into service to relieve them from further participation in the dispute, the first appellate authority took shelter behind anticipated substantive compliance of principles of natural justice embedded in procedure that would have to be established in challenge to final disposal as not having been complied with and, thereby, moving ascertainment away from stipulated limitation to be dealt with alongside adjudication on merit. Not the least, he further closed the doors to revival of the plea of safeguards after conclusion of adjudication by directing closure of the matter on facts instead of leaving it to open to be decided in fresh adjudication in accord with the legal framework of the safeguards. In decisions, so numerous and repeated so oft as to be the gold

standard of jurisdictional competence, the Hon'ble Supreme Court has acknowledged pre-eminence of the principle as can be seen from

'35.It is well known that when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876) 1 Ch.D 426] that where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. Emperor [AIR 1936 PC 253 (1)] and also by this Court in Deep Chand v. State of Rajasthan –[AIR 1961 SC 1527, (para 9)] and also in State of UP v. Singhara Singh reported in AIR 1964 SC 358 (para 8).

36.....It is one of the well known canons of interpretation that no statute should be interpreted in such a manner as to render a part of it redundant or surplusage. '

in *Chief Information Commissioner & Anr v. State of Manipur & Anr [AIR 2012 SC 864]*. We do not have to dwell any further on the impropriety in disposal of the challenge before the first appellate authority in the light of settled law.

15. We have, nonetheless, cause to pause on another aspect too as the first appellate authority has dwelt upon two decisions of the Tribunal in such manner that we are compelled to recall the strict injunction of the Hon'ble Supreme Court, in *Union of India And Others v. Kamalakshi Finance Corporation Ltd [AIR 1992 SC 711]*, on the inexorable fallout of judicial discipline observed in breach. Adjudicating authority and appellate authority may choose not be persuaded by judgements that are distinguishable on facts

and law but no lower authority may sit in judgement upon any decision of higher authority for chastising or discrediting. That Revenue chose not to challenge the said decisions rendered those to be final and binding on all lower authorities. We do not dilate any further and leave it to the good offices of the higher administration of customs to take steps for instilling judicial discipline in all those under its sway.

16. We are, in the context of findings of lower authorities, required to provide the answer to only one ground for affirmation as being legal and proper or in the light of authoritative judicial pronouncement – woefully lacking in the impugned order – and to the other finding of fact on the period of limitation not having elapsed – which, too, has not been touched upon. More so, as the trigger for limitation is ‘from accrual of such cause’ which is not only a finding on facts but also would need sifting of the investigation process for location of the trigger. While the former of the stipulations in the second of the safeguard is only a question of fact, the argument of Learned Counsel on the manner of reading the conjunction, concatenating the two deadlines, as not ‘necessary and sufficient’ has effect of adjudging the latter stipulation. This we must decline to do as that would entail foray into facts and evidence which we have excused ourselves from deliberating on.

17. Consequently, the findings in the impugned order are set aside and the submission of the appellants, leading to the proceedings before us, are left open to enable fresh decision in resumed adjudication to be taken to logical conclusion for consideration of the safeguards claimed to have

been breached. We also leave no room for doubt that the judicial observations on the scope and extent of the provisions should inform adjudicatory resolution of the plea of the appellants here.

18. The appeals are allowed by way of remand to the adjudicating authority.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*