

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86098 OF 2025

[Arising out of Order-in-Appeal No: 427(Import) Noting)/2023(JNCH)/Appeals dated 26th April 2023 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

B K Rekhatex (HK) Ltd

Unit 1213-14, 12/F, Peninsula Centre, 67 Mody Road
Tsim Sha Tsui East, Kowloon, Hong Kong SAR

... Appellant

versus

Commissioner of Customs (Import)

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Shri Mihir Mehta, Advocate for the appellant

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

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85891/2025

DATE OF HEARING:	29/04/2025
DATE OF DECISION:	06/06/2025

PER: C J MATHEW

About two thousand years ago, at Golgotha, a man had his life publicly snuffed out with two petty thieves on either side. In those

deaths, an Empire had not only notched up a victory but justified its very existence as protector of one its peoples. Secular history has it that Jesus died on the cross that Friday afternoon and Christian hagiography has it that Dismas the Penitent and Gestas the Recalcitrant were to his right and left. No matter that that very Empire was to expand even more over the next three centuries under the sign of the Cross and no matter that the Empire - both in the East and West - was to cease to exist by the end of the millennium. No matter that the Empire is no more even as the religion of that Empire named for the man who died that day lives on. What mattered was not who was made to pay the price but that the State had to extract the price. It is on the bedrock of similar foundational engagement of the State, not with people on this occasion but with commodities, that M/s BK Rekhatex (HK) Ltd has arraigned Commissioner of Customs (Imports), Jawaharlal Nehru Customs House, Nhava Sheva, as respondent before us, over the decision¹ of Commissioner of Customs (Appeals), Mumbai – II.

2. And it is not as if the impugned order was not in favour of the appellant; it was and, yet, here they are. What ‘copper rods’, the goods impugned in the proceedings leading to the appeal, and the appellant, a limited company registered in Hong Kong – a special territory of the Peoples Republic of China – and a seller, finding themselves locked in dispute within the frame of Customs Act, 1962, a tax legislation of the

¹ [order-in-appeal no. 427(Import) Noting)/2023(JNCH)/Appeals dated 26th April 2023]

twentieth century, have aught to do with a long gone assertion of might by an Establishment also long gone may mystify. Everything, it would appear, for a chapter of accidents engineered by the Establishment – or one of peripheral significance to it – had spawned this dispute.

3. The appellant, intending to source 200.58 metric tons of ‘copper wire rod 8 mm electrolytic tough pitch’ from M/s Union Copper Rod LLC, had their bank open letter of credit (L/c) in favour of the latter as beneficiary against four *pro forma* invoices of 5th November 2019 for US\$ 310,581 raised on them by the seller with payment to be made in 120 days of issuance of documents. The supplier dispatched the four shipments to India against bill of lading no. AGNJEANSA00465/20.11.2019, bill of lading no. ASCOKHLNSA1900054/01.12.2019, bill of lading no. ASCOKHLNSA1900063 / 01.12.2019, and bill of lading no. MSLJEANSA2521 / 03.12.2019 issued from the United Arab Emirates (UAE) with ‘self’ as consignee and M/s Shine Metal Industries as ‘notify party’ therein. M/s Shine Metal Industries filed bills of entry no. 5862748/28.11.2019, 5987411/07.12.2019, 6005868/09.12.2009 and 6021988/10.12.2019 in the system², with corresponding invoices raised on, and packing lists issued to, them by the appellant, on the understanding that, for taking delivery after clearance from customs, the original documents would be retired for seller to be recompensed.

² [Indian Customs EDI System (ICES)]

That was not adhered to and the documents were returned to the bank of the appellant but bills of entry continued to haunt the system. With the payment maturing for fulfilment, the appellant paid the supplier for the consignment and a fresh transaction was arranged by seller, and appellant, with M/s Sagun Copper in pursuance of which applications were filed for alteration in the system to enable payment of duty on the goods as prelude to clearance for home consumption. Instead, the goods were seized on 9th January 2020 by Directorate of Revenue Intelligence (DRI) from the premises of M/s Kerry Indev Logistics, Navi Mumbai. Enter an agency of the State into this transaction for import of 'copper rod' with its own interest in the goods.

4. Seizure under section 110 of Customs Act, 1962 is contingent upon appearances of confiscability of goods under section 111 of Customs Act, 1962. There are several layers among the contingencies envisaged therein which correspond to the physical movement of goods and, while goods may be liable for confiscation across the continuum for being at the wrong place, misdeclaration as cause will not arise till bill of entry has been filed under section 46 of Customs Act, 1962. The impugned goods were brought to a customs station on arrival in India, there is no prohibition on import of 'copper rod' into India either under Customs Act, 1962 or any other law, the goods, though yet to be processed for 'out of customs charge' under section 47 of Customs Act, 1962, had been entered to be cleared for home consumption and there

is no submission, either before us or the lower authorities, that any condition of import had been breached or any misdeclaration had occurred. Indeed, considering the stage of processing, with M/s Shine Metal Industries unable, in the absence of documents of title, to take delivery from agent of shipper, even misdeclaration of value or rate of duty was rectifiable before clearance by re-assessment under section 17(4) of Customs Act, 1962 and 'post-importation' condition, if any, was, as yet, unfastenable on goods yet to be cleared. Be that as these may, seizure of the goods is not an issue before us except for being the crutch that the original authority clutched to defer clearance of the impugned goods.

5. It appears that the decision of the authority, competency withstanding or notwithstanding, did not permit the 'substitute' importer to make fresh entry for clearance of goods under section 47 of Customs Act, 1962, ostensibly, owing to failure in furnishing 'no objection certificate (NOC)' from M/s Shine Metal Industries. Such prescription appeared to be a condition insinuated at the instance of the said authority as no statutory provision for such is found in Customs Act, 1962; nor does Customs Act, 1962, in the light of section 48 and section 49 therein, permit limitless lien on the goods. Process for release of goods by sale was not initiated by custodian nor was permission sought by M/s Shine Metals Industries for further retention with custodian. We dare say that, with documents having been returned and the ostensible importer bereft of the

documents that permitted filing of bill of entry in the first instance, the bill of entry was just that much of ‘data debris’ in electronic space and, along with it, M/s Shine Metals Industries too. That, however, is also not issue before us but, then, the apparent ‘fondness’ of customs officers for ‘copper rod’, and their proclivity for wresting custody by any means with the ‘spectral bill of entry’ as justification, is.

6. We are, therefore, constrained to look at the ‘criminalization’ of ‘copper rods’ because, come hell or high water, both a premier investigation agency and the vested jurisdiction for assessment, desired the impugned goods so covetously as to relegate the existential objective of Customs Act, 1962, viz., section 47 and section 50, to peripheral insignificance. If confiscable goods were intended to be redeemed, it would hardly matter if fine for redemption was received from a particular person, or from any other person, along with duties of customs. If goods were intended not to be redeemed, either by reason of harshness of terms for redemption or from want of wherewithal to do so, possession is vested with the Central Government whose core competency and genetic gridlines are not likely to find use for ‘copper rods’ except as goods to be sold. So, the retention of ‘copper rods’ under customs control is either for collection of fine and penalty that may not fructify or to profit from trade which is not the remit of governance. This, we must concede, is not controversy before us even as the goods have not been taken over from the custodian.

7. Be that as it may, Learned Counsel for appellant submitted that Deputy Commissioner of Customs (Import-Noting), Jawaharlal Nehru Customs House, Nhava Sheva had rejected the application for amendment of manifest by reference to circular³ of Central Board of Excise & Customs (CBEC) stipulating documentary requirements that, notwithstanding the admitted availability of ‘no objection’ dated 4th December 2020 from M/s Shine Metal Industries, was held as unfulfilled and, probably, from having been overwhelmed by the purported finality of seizure estopping any decision on goods. It was pointed out that, by misconstruing order in writ proceedings as, effectively, assigning the determination of ownership to customs officialdom, the original authority felt obliged not to disrupt *status quo* by reason of circular *supra*, prescribing adjudication ‘for major amendment involving fraudulent intention of substantial revenue implication’, and facility⁴, of Jawaharlal Nehru Customs House (JNCH), Nhava Sheva on the inevitable necessity of concurrence of original consignee as pre-requisite for change in manifest, coupled with none too obvious lack of title vesting in the appellant herein and that the cause of dispute over title had its genesis, as reported by the seizing agency, in a failed business contract owing to which alone request for amendment was prompted and only after the free access to the goods was in jeopardy.

³ [circular no. 14/2017-Customs dated 11th April 2017]

⁴ [facility no. 47/2016 JNCH dated 11th April 2017]

8. According to Learned Counsel, the reasons assigned by the Deputy Commissioner of Customs were a bundle of inconsistencies replete with contradictions engendering a successful challenge before the first appellate authority whose direction to amend the manifest was rooted in appreciation of all relevant facts and bereft of the several influences that persuaded rejection by the original authority. He contended that seizure was merely a stage in proceedings against imported goods and Customs Act, 1962 does not accord it any acknowledgement except as a temporary interdiction which may terminate by conclusion of non-confiscability under section 111 of Customs Act, 1962 or may be lifted either by decision on 'provisional release' under section 110A of Customs Act, 1962 or by operation of default in section 110(2) of Customs Act, 1962 without on any bearing on continuation of proceedings against the goods or persons connected with it. He argued that the Deputy Commissioner of Customs had erred in concluding that request for amendment had anything to do with the seizure.

9. Learned Counsel pointed out that first appellate authority, in the challenge to rejection of application to amend the manifest, had noted that M/s Shine Metal Industries was under investigation for alleged breach of condition of eligibility to benefit of concession in notification no. 25/99-Cus dated 28th February 1999 (at serial no. 89A) and that like ineligibility was, impliedly, presumed for seizure of the goods for subjecting to adjudication which did not stand in the way of amendment

of the manifest. He contended that the first appellate authority had taken into consideration that the contract of sale between appellant and M/s Shine Metal Industries had not only terminated but that documents, enabling the new buyer, M/s Sagun Copper, to assume title and possession upon clearance, were in place. He argued that the failure to carry out the amendment, as directed, was perverse in having transformed an order in their favour into cause of grievance.

10. Learned Authorized Representative took us through the facts of the case and reiterated the grounds on which the original authority had declined to permit substitution of the importer.

11. The contention of Learned Counsel on the lack of application of mind on the part of the original authority does resonate with the *schema* of Customs Act, 1962. The appellant had sought for incorporation of M/s Sagun Copper as consignee in four of the 'lines' in the relevant manifest filed by person-in-charge of conveyance, or substitute agent, as obliged by section 30 of Customs Act, 1962. The manifest is a summary document which contains, *inter alia*, tabulation of information in the bills of lading, issued to shipper as token of assumption of responsibility for safe delivery to the consignee intended by the shipper, corresponding to each consignment on board and, much like any other document, amenable to amendment by proper procedure. The manifest is, thus, a master for control over cargo on vessel landed

in India till cleared for home consumption and for action to be initiated under section 116 of Customs Act, 1962 on the person-in-charge of the vessel in the event unreconciled shortfall. As far as landed cargo is concerned, the contents of the manifest has no relevance, no significance or no consequence owing to which

'30. Delivery of import manifest or import report.

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(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.'

in section 30 of Customs Act, 1962 requires limited ascertainment for any amendment. While circular *supra* of Central Board of Excise & Customs (CBEC) or facility *supra* of Jawaharlal Nehru Customs House (JNCH), Nhava Sheva may have been issued for ensuring non-discriminatory treatment of all applications for amendment and for distancing the Union of India from any potential dispute over title by having taken all reasonable steps to ascertain title of the substitute consignee, it does not, and cannot, substitute for application of mind to factual circumstances envisaged in the empowerment vesting in the 'proper officer' to allow amendments; that is the only sure test of disposal of application as being legal and proper.

12. In the light of submission of Learned Counsel on the

tentativeness and limited significance of seizure and, especially of impugned goods, which are not prohibited for import or tainted in law, the assumption of jurisdiction to determine title, on specious claims of vestment by Hon'ble High Court of Bombay, as impediment to approve the application of the appellant is contrary to the restricted framework permitted by law. The Hon'ble High Court, owing to contents of counter-affidavit of a respondent which apparently had nothing to do with clearance of goods, declined to decide on claim of physical access to the goods in writ jurisdiction naming an instrument of the state for non-response to plea for amendment. With the absence of response precluding scrutiny of decision for *ultra vires*, the writ proceedings could only have had the sole outcome of direction to decide on an application preferred before 'proper officer' under Customs Act, 1962 and it was in consequence that the Deputy Commissioner of Customs disposed off the application. The Deputy Commissioner exceeded the statutory bounds of section 30(3) of Customs Act, 1962 by premising authority to determine title to the goods when the only consideration should have been fraudulent intention in application for amendment. There can be no fraudulent intent in making an entry under section 46 of Customs Act, 1962 for clearance of goods after assessment in accordance with law. There can be no fraudulent intent when goods that may be prohibited for import by law are not shed of such prohibition by amendment in manifest. There can be no fraudulent intent when

proceedings for re-assessment under section 17 are not underway. There can be no fraudulent intent with obligations devolving on importer, if any, arising only after clearance under section 47 of Customs Act, 1962. There can be no fraudulent intent when proceedings already under way against any person is not stultified by amendment nor does seizure of goods stand in the way of exercise of specific empowerment under section 30 of Customs Act, 1962. Most of all, the original authority appeared to be oblivious of the demonstrated disinclination of M/s Shine Metal Industries to complete the process of clearance and oblivious that being influenced by reported conditional willingness of M/s Shine Metal Industries to complete the process which would only defer the collection of duties by the exchequer that another importer was prepared to discharge with promptitude. The decision of the original authority was not in the interests of the exchequer unless it was intended that the exchequer should acquire possession of the impugned goods.

13. The original authority had chosen also to ignore a most important obligation on the part of M/s Shine Metal Industries to seek extension for completion of clearance as required by section 48 of Customs Act, 1962 and protection of title of M/s Shine Metal Industries, such as it is, in the light of investigation into their alleged activities and unwillingness to comply with procedural stipulations on retention of goods without clearance, is not a decision that finds favour. The first

appellate authority, appreciating the facts and circumstances, permitted the amendment. Yet, there is demonstrated recalcitrance in compliance with the order. There is no appeal by the jurisdictional Commissioner of Customs against the order directing the amendment sought by the appellant that may have served to enable defence of such recalcitrance. Learned Authorized Representative is hamstrung by the overruling of the rejection of the request for amendment and, rightly so, could not, as officer of customs, assail an order of Commissioner of Customs (Appeals) without setting himself up as the authority empowered in the statute for review of the order of first appellate authority, viz., Committee of Commissioner of Customs.

14. No such sense of propriety, respect for judicial discipline or compliance with the statutory limits to empowerment appeared to hold back the Deputy Commissioner of Customs from defying the order of the first appellate authority. That functionary also appeared to be oblivious to the admonishment by the Hon'ble Supreme Court

'6..... It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should

be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not “acceptable” to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.’

in Union of India v. Kamalakshi Finance Corporation Ltd [1991 (55) ELT 433 (SC)].

15. The competent authority to carry out the direction of the first appellate authority was so lost to its statutory obligations as to revive the process of scrutiny of applications by calling upon the appellant to evince title to the goods which was not within its authority under law. The competent authority, by doing so, sat in judgement over its own rejection in fresh proceedings which is contrary to all canons of adjudicatory propriety. The competent authority, by initiating fresh proceedings, has sent the order of the first appellate authority into orbital limbo. The competent authority, by flushing out the order of the first appellate authority has erased the history of the dispute by clear act of insubordination. The actions of the competent authority are in gross disregard of the acceptance by jurisdictional Commissioner of Customs that rejection of the applicant for amendment was incorrect.

16. The appellant herein had no reason to be aggrieved by the

impugned order and, indeed, was not until in receipt of communication⁵ of Assistant Commissioner of Customs, and lacking any reference to the direction of Commissioner of Customs (Appeals), that sufficed for them to re-look at their order and the imperative of appealing that order. In the circumstances of new view of the order, the delay in resorting to section 129A of Customs Act, 1962 was found fit to be condoned. In view of the circumstances of the goods lying uncleared, and likely to remain so for the near future with potential of re-litigation, the appeal was pulled in for 'out of turn' disposal.

17. On behalf of appellant, it is represented that goods, neither offending to any law of trade within India or on bringing to India under law governing cross-border trade nor, for any justifiable cause, liable to treated as confiscable, were not being allowed to be cleared by officers of customs who, and for no reason other than determined resistance to discharge their empowerment within the framework of section 30 (3) of Customs Act, 1962, had been derelict in disposition to complete the statutory pre-requisites for assessment. In the circumstances of the 'proper officer' having resisted not only the statutory importuning of the appellant but also appellate adjudgement, which remained unchallenged, and the not imperceptible inclination to hold the goods for M/s Shine Metal Industries contrary to implied severance by efflux of time in section 48 of Customs Act, 1962, we see

⁵ [F no. CUS/APR/BE/868/2024 Gr.IV dated 6th March 2025]

no reason not to allow relief from costs of holding that is liable to devolve on the appellant commercially. We are prompted so for two reasons. The law has to be read and enforced in the manner intended, *i.e.*, in literal meaning and context, with other interpretations contingent only upon any impediment in so doing. A statutory proceeding, subject to appellate review, is bound by the same principles of interpretation; any contrary allowance bespeaks adversarial equation of executive and judicial wings. There was no cause or jurisdiction to misread the appellate decision. Further, had the process prescribed in section 48 of Customs Act, 1962 been initiated in the manner prescribed in law, the custodian appointed under section 46 of Customs Act, 1962 would not have had to bear the consequence of holding cost and imposition of demurrage. The jurisdictional Commissioner of Customs shall, on application of appellant, issue certificate for waiver of demurrage.

18. There is no appeal by either side against the content and directions in the order. The cause of grievance stems from the communication received by the appellant from the Deputy Commissioner of Customs which has the implication of revival of invitation to customs authorities to decide on the person who should be filing the bill of entry. The claim, if any, of M/s Shine Metal Industries stands rescinded by operation of section 48 of Customs Act, 1962 and failure to dispose off the goods, whatever be the reason, does not, of itself and without permission that may now involve retrospective

approval, revive the right to clear the goods. Public interest is not served by keeping the goods under customs control when discharge of duty liability is the sole pre-requisite for clearance therefrom. The colour, creed, gender or any other distinction between persons – natural or artificial - is not relevant to the discharge of such dues as are owed to the State by authority of law. The person is not important and the levies are; the person sought to be inserted binds itself to discharge of appropriate duties of customs by filing bill of entry. Denial, except for the reason permitted by section 30(3) of Customs Act, 1962, of opportunity to file bill of entry is denial to the State of levies that are liable from, and upon, arrival in India. The interests of the State is paramount in all circumstances except in that provided by law as circumscribing. There is no provision of law brought on record to demonstrate that substitution of one importer by another is of consequence to Customs Act, 1962. To turn the provisions of instructions, intended to erase whimsical handling of requests under section 30(3) of Customs Act, 1962, to disable the process for clearance of goods, brought in legally and, as yet, not tainted by illegality, is, if anything, deplorable. The foundation of the objection by customs authorities to the amendment is that M/s Shine Metal Industries, adopted by customs authorities as the rightful owner whose claims must be preserved even in the face of appellate order, is consignee. M/s Shine Metal Industries is not consignee of the goods but was merely ‘notify

party’ – with specific standing in such international transactions – with consignor having consigned the goods to ‘self’; ‘notify party’ has no claim unless, in terms of section 2(26) of Customs Act, 1962, by

‘holding himself out to be importer’

made manifest by filing bill of entry and, with the right of M/s Shine Metal Industries to have the goods cleared in the manner prescribed in section 47 of Customs Act, 1962 having been renounced by failure to seek extension of time prescribed in section 48 of Customs Act, 1962, there is no other claim to be adjudged, any which way.

19. In light of the above, there is no scope for perspective of the impugned order as cause of grievance to the appellant. Any action that proceeds on a different assumption is, in the light of no challenge to the impugned order, at peril of consequence of patent breach of judicial discipline. The impugned order, clear as it is, is not ambivalent and does not to be interfered with.

20. Appeal is, accordingly, disposed off.

(Order pronounced in the open court on 06/06/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*