

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH**

Customs Appeal No. 86658 of 2025

**(Arising out of Order-in-Original No. 01/2025/CCO/25-26
dated 03.07.2025 passed by the Chief Commissioner of
Customs, Zone II, Nhava Sheva)**

Dipakkumar Dharamsinbhai KakadiyaAppellant
801, Shubh Lakshmi Residency, Ved Gurukul Rd
Surat, Gujarat

VERSUS

Chief Commissioner of Customs, Zone II,Respondent
Nhava Sheva
JNPT Custom House, Nhava Sheva

WITH

Customs Appeal No. 86659 of 2025

**(Arising out of Order-in-Original No. 01/2025/CCO/25-26
dated 03.07.2025 passed by the Chief Commissioner of
Customs, Zone II, Nhava Sheva)**

Dipak Trading CoAppellant
Shop No. F-29, Mkt I Phase II,
APMC, Sector 19, Vashi, Turbhe, Navi Mumbai

VERSUS

Chief Commissioner of Customs, Zone II,Respondent
Nhava Sheva
JNPT Custom House, Nhava Sheva

With

Customs Appeal No. 86660 of 2025

**(Arising out of Order-in-Original No. 01/2025/CCO/25-26
dated 03.07.2025 passed by the Chief Commissioner of
Customs, Zone II, Nhava Sheva)**

Kakadiya Savitaben DharamshiAppellant
801, Shubh Lakshmi Residency, Ved Gurukul Rd
Surat, Gujarat

VERSUS

Chief Commissioner of Customs, Zone II,Respondent
Nhava Sheva

JNPT Custom House, Nhava Sheva

AND

Customs Appeal No. 86661 of 2025

**(Arising out of Order-in-Original No. 01/2025/CCO/25-26
dated 03.07.2025 passed by the Chief Commissioner of
Customs, Zone II, Nhava Sheva)**

Kakadiya Brijeshkumar VinodbhaiAppellant

801, Shubh Lakshmi Residency, Ved Gurukul Rd
Surat, Gujarat

VERSUS

Chief Commissioner of Customs, Zone II,Respondent
Nhava Sheva

JNPT Custom House, Nhava Sheva

APPEARANCE:

Shri Prakash Shah, Sr. Advocate a/w Shri Sujit Sahoo & Ms Ira
Mishra, Advocate for the appellant
Shri D S Mann, DC (AR) & Shri J K Jain, JC(AR) for the
respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86087-86090/2025

DATE OF HEARING : 09-07-2025

DATE OF DECISION : 15-07-2025

Per: AJAY SHARMA

These appeals have been filed against the *ex parte* order
dated 03.07.2025 passed by the Chief Commissioner-
Compounding Authority [hereinafter referred to as the
'compounding authority'] whereby a common compounding

application dated 1/2.7.2025 filed by the appellants herein was dismissed under Rule 4 (3) of the Customs (Compounding of offences) Rules, 2005 without giving any opportunity of hearing to the appellants.

2. The issue involved herein for consideration is whether the Compounding Authority i.e. the Chief Commissioner was justified in rejecting the compounding application filed under Section 137(3) of the Customs Act, 1962 without granting any opportunity of hearing to the appellant which is the mandate enshrined in the first proviso to Rule 4(3) *ibid*?

3. The factual matrix reveals that the appellants had filed a common compounding application u/s. 137(3) *ibid* before the Compounding Authority i.e. Chief Commissioner of Customs, Nhava Sheva on 1.7.2025 for availing one time opportunity for compounding in an ongoing investigation by the Directorate of Revenue Intelligence (DRI), anticipating the launch of criminal prosecution against them upon the culmination of the said investigation. The allegations pertain to mis-declaration of value in respect of freely importable dry fruits namely walnuts, almonds and pistachios through manipulated invoices. These alleged malfeasance, according to revenue, has resulted in the evasion of customs duty and constitutes offences punishable u/Ss. 132 & 135 of the Customs Act, 1962 and there is apprehension of appellants' prosecution at the instance of DRI. At the time of filing the compounding application, prosecution

had not yet been launched. However, one of the applicants therein i.e. applicant No.2 had been arrested u/s. 104 of the Act and is in judicial custody.

4. The Compounding application was filed to avail one time statutory mechanism for seeking immunity from prosecution as envisaged u/s. 137(3) *ibid* r/w. Customs (Compounding of Offences) Rules, 2005. The appellants emphatically contended in the application that that the goods imported were freely importable and the matter was still under investigation and no show cause notice had been issued and no adjudication of duty, fine or penalty had been undertaken. It was highlighted that section 137(3) *ibid* permits the filing of compounding application at any stage whether prior to or subsequent to the institution of prosecution.

5. Simultaneously, the appellants had also filed Anticipatory Bail application before the Hon'ble Bombay High Court. One of the grounds urged therein was the filing of the application for compounding before the institution of prosecution to avoid multiplicity of proceedings, to mitigate the rigors of prosecution and to protect personal liberty.

6. As per the appellants, the said anticipatory bail application was to be listed for hearing before the Hon'ble Bombay High Court on 4.7.2025. Intriguingly on the preceding day i.e. on 3.7.2025 the compounding application was rejected by the compounding authority *ex parte* without granting any personal

hearing to the appellants. This was brought to the notice of the Hon'ble High Court by DRI in their Affidavit in Reply filed before the Hon'ble High Court on 4.7.2025 opposing the anticipatory bail application.

7. These appeals have been vehemently opposed by revenue on the ground of maintainability before this Tribunal. Their contention is anchored in Section 129 A (1) of Customs Act, 1962 which, according to them, provides for appeal before the Tribunal only against the Orders of Principal Commissioner of Customs or Commissioner of Customs. It has been submitted that orders on the compounding application filed under Section 137(3) of Customs Act, 1962 are not appealable under Section 129A(1) *ibid* before the Tribunal as the Chief Commissioner is neither an 'adjudicating authority' nor the said designation has been referred anywhere in Section 129A(1). Furthermore, the Compounding Rules themselves do not contain any provision for appeal. Argument under Section 129 C (4) *ibid* has also been raised on behalf of revenue regarding the issue of maintainability of these appeals before a Single Member Bench of the Tribunal, citing the alleged duty invasion of Rs.44 crores under investigation. On the merit of the Appeals, it has been argued on behalf of Revenue that the compounding application has not been 'rejected' but merely held 'inadmissible' by the impugned order due to non-payment of the dues such as duty, fine, penalty and interest. According to revenue, Compounding Rules and the circulars mandate the payment of duty, interest and

penalty as which is the necessary condition for the compounding application.

8. In response to the preliminary objection concerning the maintainability of the instant appeals before this Tribunal, learned senior counsel for the appellants drew strength from the decision of Hon'ble Gujarat High Court in the matter of *CCE vs. Girish B. Mishra; 2016(339) ELT 67 (Guj.)*. In that case, a similar objection raised by revenue was rejected by the Hon'ble High Court affirming the Tribunal's jurisdiction to hear such appeals against the orders of Compounding Authority. It has been held therein that an order passed by Chief Commissioner while deciding a compounding application would undeniable fall within the ambit of an order passed by an 'adjudicating authority' as defined in section 2(a) of Central Excise Act, 1944 and an appeal whereof would lie before the Tribunal in terms of Section 35B of Central Excise Act, 1944. It was submitted that said section 35B *ibid* is *pari materia* to Section 129 A of the Customs Act, 1962. Although it has been submitted by revenue that the said decision of the Hon'ble High Court was challenged before the Hon'ble Supreme Court of India in the year 2016 and is still pending but no stay granted therein has also been acknowledged by Revenue. Regarding the maintainability before a Single Member Bench of Tribunal, learned Senior Counsel referred to almost identical matter of *Amrutlal Kaluram Purohit vs. ADG (Adjudication), DRI, Mumbai; 2023(3) TMI 900 – CESTAT MUMBAI* where the evasion was allegedly

approximately Rs.17 Crores and the order under challenge was also passed by the Chief Commissioner under Rule 4 *ibid*. That case was heard and decided by the Single Member Bench. Although the same decision in *Amrutlal Purohit (supra)* has also been challenged by revenue before the Hon'ble High Court of Judicature at Bombay but no issue regarding the maintainability before the Single Member Bench has been raised therein and till date no stay has been granted by the Hon'ble High Court. Learned Senior counsel further submits that the impugned order herein has been passed by the learned Chief Commissioner in a hurried manner evidently influenced by the fact that the anticipatory bail applications filed by the appellants were listed for hearing before the Hon'ble Bombay High Court on the very next day where the pendency of compounding application has been pleaded.

9. I have heard Mr. Prakash Shah, learned Senior Counsel for the appellants and Mr. D.S. Mann alongwith Mr. J.K. Jain, learned Authorised Representatives on behalf of Revenue and perused the case records including the written submissions and case laws placed on record by the respective sides. I shall first address the preliminary issue concerning maintainability of Appeal before this Tribunal. The term "Adjudicating Authority" is defined in Section 2(1) as follows-

"2(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act but does not include the Board, Commissioner (Appeals) or Appellate Tribunal:"

The definition of adjudicating authority is manifestly, encompassing 'any authority' which passes 'any order or decision under this Act'. This definition unequivocally includes any order that decides the *lis* of a party. Consequently the Chief Commissioner in deciding the compounding application filed u/s. 137 (3) of the Customs Act, 1962, undoubtedly falls within the aforesaid definition of 'adjudicating authority'. While passing the orders under the Compounding of Offences Rules, 2005, the Chief Commissioner is neither a Board nor Commissioner (Appeals) nor Appellate Tribunal but acts as Adjudicating Authority. The Chief Commissioner as compounding authority is thus an "*adjudicating authority*". Section 128 *ibid* permits appeal to Commissioner (Appeals) by any person aggrieved by any decision or order passed under the Act by an officer of customs lower in rank than a Principal Commissioner/ Commissioner of Customs. Whereas Section 129A *ibid* empowers any person aggrieved by any decision or order passed by an adjudicating authority, to prefer an appeal to the Appellate Tribunal challenging such order, provided the appeal is not barred under first proviso to Section 129A. Since the Appeal provision exists in the Act itself, absence of such a provision in the *Compounding of Offence Rules* is not of much significance. Crucially the *Compounding of Offence Rules* neither prohibit nor state that no Appeal will lie against such an order. Had there been such a prohibition, a writ petition would indeed have been the sole recourse available.

10. A similar objection, regarding the maintainability of Appeal under Section 129A *ibid* before this Tribunal particularly in the absence of explicit appeal provisions in *Courier Regulations*, was raised by the revenue before the Hon'ble High Court of Judicature at Bombay in *Principal Commissioner of Customs vs Bombino Express Pvt. Ltd.; 2018 (13)GSTL 52 (Bom.)* but the said objection was rejected by the Hon'ble High Court. The said decision was subsequently affirmed and followed by the Hon'ble Bombay High Court in *Commissioner of Customs (II), Airport Special Cargo vs. Lynx Express Pvt. Ltd.; 2020 (372) ELT 696 (Bom)* where the appeal filed by Revenue raising the similar issue whether this Tribunal has jurisdiction to entertain Appeal against the order of Principal Commissioner of Customs passed under the Courier Import & Export Regulations, 1998, was dismissed.

11. Furthermore the issue of maintainability of appeal under Section 35B of Central Excise Act, 1944 (*which, as noted, is pari material with section 129A of Customs Act, 1962*) against the order of compounding authority in a compounding application under the Central Excise (Compounding of Offences) Rules, 2005 r/w. Section 9A of the Central Excise Act, 1944 was deliberated by the Hon'ble High Court in *Girish B. Mishra (supra)* and issue was raised by revenue before the Hon'ble High Court whether an order passed by the Chief Commissioner on an application for compounding of offence could be construed as an order passed by the 'Adjudicating Authority' as defined u/s. 2(a) of the Central Excise Act, 1944. The Hon'ble High Court while

dismissing the appeal filed by revenue held as under:-

"7.The power of compounding flows from Section 9A(2) of the Act. The procedure is laid down under the Central Excise (Compounding of Offences) Rules, 2005. Under such rules, the compounding authority has a discretion to grant or not to grant, compounding upon such conditions that may be imposed by him. It is thus, clear that the compounding authority exercises its discretionary power and decides an application filed by the appellant for compounding of offence. By no stretch of imagination, it can be stated that such order either allowing or rejecting the application for compounding is not an order passed by the Commissioner as adjudicating authority as defined under Section 2(a) of the Act. Any such order would certainly be an order passed under the Act...."

12. During the course of hearing learned Senior Counsel submits that an identical issue came up for consideration before the Hon'ble High Court of Andhra Pradesh and Telangana in the matter of *Ms. Khan Sadaf vs. UOI, Rep. by Secretary, Revenue (Customs & Central Excise); W.P. No. 8349 of 2017*. There, against the order of the compounding authority declining to compound the offence u/s. 137 of the Customs Act, 1962, the Petitioner filed writ petition before the Hon'ble High Court. But the Senior Standing counsel appearing on behalf of Revenue raised the preliminary objection, contending that against the order of the compounding authority the petitioner ought to have filed an appeal before the Tribunal u/s.129 A of Customs Act, 1962. Following this objection, the Hon'ble High Court vide its order dated 2.11.2017 dismissed the writ petition granting liberty to the petitioner to approach the Tribunal. Subsequently, the Revenue filed a Review Petition before the Hon'ble High

Court by asserting that adjudication order passed by the Chief Commissioner is not appealable u/s.129 A *ibid*, which review petition was dismissed by the Hon'ble High Court. Thereafter the petitioner therein filed appeal before the Tribunal which, relying upon the judgment of the Hon'ble Gujarat High Court in the matter of *Girish B. Mishra (supra)* was allowed by the Tribunal by remanding the matter to the Chief Commissioner/Principal Chief Commissioner for deciding the matter afresh after adhering to the principles of natural justice vide Final order No. A/30039/2023 dated 5.4.2023. Against the aforesaid order of the Tribunal in *Khan Sadaf's case (supra)*, Revenue preferred an appeal before the Hon'ble Telangana High Court being C.E.A. No. 5 of 2023. The Hon'ble High Court vide its order dated 4.9.2023 after a thorough examination of the relevant provisions of the Customs Act, 1962 namely sections 129A and 137 and also the definition of '*adjudicating authority*' as provided u/s. 2(1) *ibid* rejected the appeal filed by revenue and held as under:-

"xxx

xxx

xxx

13. *The intention of the law makers while enacting the law or any authorized officer or a competent authority who has been entrusted with a power to decide or adjudicate, automatically becomes an adjudicating authority. Sub-section 1 of Section 129-A in this regard would clearly mean that an adjudicating authority is one who has passed a decision or an order. They would be an authority competent and thereby would become an adjudicating authority.*

14. *Now if we look into the provision of Section 137(3) of the Act, it also would give an clear indication that for the purpose of compounding an offence, application has to be moved before the Chief commissioner of Customs along, and it is who has to take a decision. Thus on an application which stands*

decided under Section 137(3), the Chief Commissioner becomes the adjudicating authority or a competent authority under the Act to take a decision on an application bringing him under the purview of an adjudicating authority. No provision under the Act envisages the decision taken under Section 137(3) or for that matter, a decision taken by the Chief Commissioner would not be an appealable order and that his order would be final, so as to accept the contention of the learned counsel for the appellant that it is only a writ remedy that is available to him.

15. For all the aforesaid reasons, we do not find any infirmity in the order passed by the Tribunal, nor does this Court find sufficient force in the arguments of the learned counsel for the appellant. Moreover, the order of the Tribunal also is not in any manner adverse to the interest of the Department. Where the only direction given is that of remanding the matter back to the competent authority to take a decision afresh.

16. In the factual backdrop, the appeal thus fails and is accordingly, rejected. There shall be no order as to costs."

13. Against the aforesaid order of the Hon'ble High Court, revenue had filed Special Leave Petition before the Hon'ble Supreme Court of India and the same was disposed of by the Hon'ble Supreme vide Order dated 15.04.2024 without interfering with the order of the Hon'ble High Court, keeping open the contention of revenue about the maintainability of appeal before this Tribunal.

14. In light of the comprehensive discussions in the preceding paragraphs, the objection raised by Revenue concerning the maintainability of appeal before this Tribunal, is devoid of any merit and is, therefore, rejected.

15. I shall now address the objection regarding jurisdiction of the Single Member Bench u/s.129C(4) of the Customs Act, 1962.

To appreciate this issue fully, Section 129C(4) *ibid* is extracted hereunder:-

"129C Procedure of Appellate Tribunal

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty involved, does not exceed fifty lakh rupees."

Section 129C(4) stipulates that appeals where '*determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment*' are in issue must be heard by a Division Bench of the Tribunal. While the expression "*relation to*" is generally of a wide import, in the context of Section 129C, it must signify a direct and proximate relationship to the rate of duty of customs or the value of goods for the purpose of assessment. However, in the instant Appeals, neither the rate of duty of customs nor the value of goods for the purpose of assessment is in issue. The duty liability has not yet determined and the same has been acknowledged by the learned Chief Commissioner in the impugned order by recording that '*neither has any determination of the duty, penalty and*

interest been made by the proper officer'. As far as the circulars relied upon by the revenue are concerned, they can only be applied after the determination of duty, penalty and interest which has not yet transpired. A similar issue came up for consideration before the Hon'ble Supreme Court in the matter of *Naveen Chemicals Manufacturing & Trading Co. Ltd. Vs the Collector of Customs; 1993(68)ELT 3 (S.C.)* and the Hon'ble Supreme Court while interpreting Section 129C *ibid* has laid down that a member of Tribunal sitting singly can hear appeals where the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' are not in issue.

16. Following the aforesaid decision in *Naveen Chemicals (supra)*, a Co-ordinate Bench of Tribunal in *Chief Commissioner of Customs, Ahmedabad v. Ashapura Garments Limited reported in 2017(346) ELT 599 (Tri.-Ahmd.)* while interpreting Section 129C(4) *ibid* has addressed the issue of jurisdiction of a Single Member Bench in appeal against the order on compounding application under Section 137(3) *ibid*. The relevant portion of the said decision is extracted hereunder:-

"13. We find that the specific and direct issue before us in the appeals herein is whether the order dated 4-2-2016 of Chief Commissioner of Customs, rejecting Compounding of offences Applications of the respondents as premature and not maintainable, is correct. The value involved for determination for the purposes of assessment of duty or rate of duty or fine involved are not the issue, nor the issue raised in the appeals, nor for decision before us. The decision of the Hon'ble Supreme Court in the case of Navin Chemicals Manufacturing & Trading Company Limited (supra) lays down the principle of direct or proximate relation in respect of Section 129C(4). We are not able to

persuade ourselves to accept the line of contention of the Id. Special Counsel and to decide the jurisdiction of the Single Member Bench on the basis of the value or duty or drawback amount of the 'root' matter. Valuation dispute, or Rate of duty dispute, or the drawback amount eligible, are not before us to decide in the present appeal. We are called upon here to decide whether the impugned order rejecting the Compounding of Offences Application as premature is correct or not. In view of the above, we find that there is no inherent lack of jurisdiction for the Single Member Bench in hearing the appeals and miscellaneous applications and in passing the Interim Order No. I.O./120-123/2016, dated 21-3-2016....."

It is noteworthy that the aforesaid decision of the Tribunal has not been challenged by Revenue anywhere and has, therefore, attained finality.

17. At the cost of reiteration, it is pertinent to emphasise that the core issue in these appeals is neither concerning duty, fine or penalty nor any valuation. Instead, it exclusively pertains to the rejection of the compounding application by the Chief Commissioner on the grounds of being premature and inadmissible. Therefore, it conclusively held that there is no inherent lack of jurisdiction of the Single Member Bench in entertaining these appeal against such order. The reliance placed by revenue on Circular Nos.27/2015-Cus, 12/2022-Cus and 15/2022-Cus is entirely misplaced and without any application whatsoever, in view of the discussions made hereinabove.

18. Furthermore, this Tribunal had earlier dealt with an identical issue in *Amrutlal Kaluram Purohit vs. ADG (Adjudication), DRI, Mumbai; 2023 (3) TMI 900 - CESTAT MUMBAI* wherein gold bars worth Rs.17 crores were seized under the provisions of Customs Act. The Order of the Compounding

Authority rejecting the application under the Compounding of Offences Rules, 2005 was challenged before a Single Member Bench of this Tribunal. The Single Member Bench, after entertaining the appeal, remanded the matter back to the Chief Commissioner for adjudication on merits after grating opportunity of hearing to the appellant therein. Significantly, no challenge to the jurisdiction of the Single Member Bench to hear the appeal was raised therein, notwithstanding the serious allegation of illegal import of 57 kgs of gold bars against the appellant. Although the aforesaid order has since been challenged by the Revenue before the Hon'ble Bombay High Court, the jurisdiction of the Single Member Bench has not been questioned by revenue therein and till date the Revenue has not obtained any stay of the said decision.

19. So far as the decision of the Hon'ble Supreme Court, as cited on behalf of Revenue, in the matter of *UOI vs. West Coast Paper Mills Ltd.*; 2004(164) ELT 375 (SC) is concerned, the issue involved therein pertained to the starting point of limitation for filing Suit-whether it is from the date of Order of Railway Rates Tribunal or from the Order of the Hon'ble Supreme Court dismissing the SLP against the said Order of the Railway Rates Tribunal. The Hon'ble Supreme Court therein expounded on the doctrine of merger and explained when a decree becomes executable. The issue involved herein was conspicuously absent before the Hon'ble Supreme Court in that case. Similarly, the decision of the Hon'ble Bombay High Court, as cited by Revenue,

in *Tltanor Components Ltd. Vs Commissioner of Income Tax; 2009 (238) ELT 596 (Bom.)* offer no succour to the department. In that matter the Hon'ble High Court held that the ITAT, Panaji, had erroneously relied upon the decision of ITAT, Delhi, when the said order of ITAT, Delhi was pending consideration before the Hon'ble Delhi High Court. The Hon'ble High Court thus observed that the ITAT, Panji ought to have waited the adjudication of the question of law by the Hon'ble High Court. In stark contrast, in the instant appeals, the preliminary objections pertaining to the jurisdiction of the Tribunal and, specifically, of the Single Member Bench to hear appeals against the order of the compounding authority, has been resolved in favour of the Tribunal by a plethora of pronouncement from various High Courts and the Hon'ble Supreme Court.

20. The issue concerning the maintainability of appeal before the Single Member Bench as raised by revenue is covered against them in various decisions as discussed in preceding paragraphs. The decision of the Larger Bench of the Tribunal in of *C.Pinto Vs Commissioner of Customs, Mumbai; 2018(9) GSTL 95 (Tri-LB)* is also of no substantial assistance to the revenue, as the issue involved therein was entirely distinct from the one at hand.

21. Furthermore, in the matter of *Union of India vs. Kamlakshi Finance Corporation Ltd.; 1991(55) ELT 433 (SC)* while dismissing the Special Leave Petition filed by the department the

Hon'ble Supreme Court eloquently interpreted the term '*judicial discipline*' and held as under:-

"6.....The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. 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 Assistance Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistance 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 assessees and chaos in administration of tax laws.'
[emphasis supplied]

22. In conformity with the principle of judicial discipline, the judgment of the Hon'ble Gujarat High Court in *Girish B. Mishra (supra)* or order of this Tribunal in *Amrutlal Kaluram Purohit (supra)* are binding till the time it is stayed or set aside in Appeal. Department has demonstrably failed to produce any order staying the operation of the aforesaid decisions nor have they adduced any contrary view taken by any higher appellate authorities. Therefore, having settled the preliminary objections, I shall now proceed to decide the instant appeals on merits.

23. To appreciate the issue on merits, it is imperative to

examine the Rule 4 of Customs (Compounding of offences) Rules, 2005 which is extracted hereunder: -

“Rule 4. Procedure on receipt of application under rule 3.-

(1) On receipt of an application under rule 3, the compounding authority shall call for a report from the reporting authority with reference to the particulars furnished in the application, or any other information, which may be considered relevant for examination of such application.

(2) Such report shall be furnished by the reporting authority within a period of one month or within such extended period as may be allowed by the compounding authority, from the date of receipt of communication from the compounding authority.

(3) The compounding authority after taking into account the contents of the said application may, by order, either allow the application indicating the compounding amount in terms of rule 5 and grant him immunity from prosecution in terms of rule 6 or reject such application:

Provided that application shall not be rejected unless an opportunity has been given to the applicant of being heard and the grounds of such rejection are mentioned in such order:

Provided further that application shall not be allowed unless the duty, penalty and interest liable to be paid have been for the case for which application has been made.

(4) A copy of every order under sub-rule (3) shall be sent to the applicant.

(5) The applicant shall, within a period of thirty days from the date of receipt of order under sub-rule(3) allowing the compounding of offences, pay the compounding amount, as ordered to be paid by the compounding authority and shall furnish the proof of such payment to the compounding authority.

(6) The compounding amount once paid shall not be refunded except in cases where the Court rejects grant of immunity from prosecution.

(7) The applicant cannot claim, as of right, that his offence shall be compounded.”

Rule 4 *ibid* meticulously lays down the procedure to be adhered

to by the compounding authority upon receipt of compounding application. As per the aforesaid rule, the compounding authority i.e. learned Chief Commissioner herein was under mandatory obligation (as denoted by the word 'shall') to first call for a report from the reporting authority concerning the particulars furnished in the compounding application, or any other relevant information. The reporting authority, in turn, was required to furnish this report within 30 days from the date of receipt of communication from the compounding authority. It is only after this preliminary step that Rule 4(3) comes into play. However, in the instant appeals, the request for compounding, sought by the Appellants by invoking the statutory provisions of Section 137(3) of the Customs Act, 1962 prior to the institution of prosecution, was summarily denied without even the rudimentary step of calling for a report from the Reporting Authority as mandated by Rule 4(1) *ibid*. The learned Chief Commissioner has rejected the application under 2nd proviso to Rule 4(3) *ibid* categorizing it as premature/inadmissible, crucially without even granting any opportunity of hearing to the appellants which is in direct contravention of the clear mandate of first proviso to Rule 4(3) *ibid*. If the intention was to reject the application, an opportunity of hearing is an indispensable prerequisite. The language of the 1st proviso is plain and unambiguous, that 'application shall not be rejected unless an opportunity has been given to the applicant of being heard...' [*emphasis supplied*]. Evidently without granting an opportunity of hearing, the application cannot be rejected as

per the said proviso. The 2nd proviso, upon which the learned Chief Commissioner placed reliance for rejecting the application, has to be considered solely while allowing the application. In such circumstances, the said proviso explicitly states that *'application shall not be allowed unless the duty, penalty and interest liable to be paid have been paid for the case for which application has been made.'* [emphasis supplied]. I am not able to fathom how the learned Chief Commissioner could bypass the mandatory requirement of Rule 4(1) and directly proceed to Rule 4 (3), and further, how he could jump directly to 2nd proviso to Rule 4(3) without even considering the 1st proviso, thereby passing the impugned order without granting any hearing whatsoever to the Appellants.

24. On merits, the learned Authorised Representatives reiterated the findings recorded in the impugned Order, contending that the rejection of the compounding application is solely premised on procedural inadmissibility under Rule 4 *ibid*. This inadmissibility, they argued, stemmed from the non-fulfilment of pre-conditions namely, full disclosure of duty evaded and non-payment of duty, fine, penalty, and interest. According to them, the law unequivocally mandates that the payment of duty, interest and penalty liable to be paid are indispensable pre-conditions for allowing of the application. Consequently, they asserted that the appellants' claim of violation of natural justice is unfounded, as no personal hearing is mandated for pointing out such deficiencies. During the course

of hearing, both learned Authorised Representatives for Revenue submit that the impugned order is merely an interim order highlighting deficiencies, rather than a definitive rejection of application. Per contra learned Senior Counsel pointed out one paragraph from the Affidavit-in-Reply filed by DRI on 4.7.2025 before the Hon'ble Bombay High Court opposing the anticipatory bail applications of the appellants. The said Affidavit-in-Reply filed by DRI, has been tendered during hearing by the learned Senior counsel in which it has been stated on oath by Ms. Shweta Suman, Deputy Director, DRI as under:-

"8. Moreover, it is important to note that the concerned authority has rejected the application for compounding filed by the applicants herein, vide order dated 3.7.2025. A copy of the Order dated 3rd July, 2025 is annexed herewith and marked as Exhibit A."

It is noticed by me also in the written submissions herein dated 9.7.2025, tendered by learned Authorised Representatives on behalf of Revenue, that against point No.1 Issue: Revenue has stated that *the appellant filed a compounding application, which was subsequently rejected on the basis of discrepancies.*

25. Learned Senior Counsel further submits that the appellants herein have filed anticipatory bail applications before the Hon'ble Bombay High Court on the 1st July, 2025 and the pendency of their compounding application was one of pleas taken therein. According to learned senior counsel this was the sole reason for hurried rejection of their compounding application by the learned Chief Commissioner, without granting

any opportunity of hearing to them.

26. The statutory scheme of Compounding is intrinsically designed for settlement without compromising on due and payable revenue. Section 137(3) of the Customs Act, 1962 permits the filing of compounding application *at any stage* providing that any offence under that Chapter may, either before or after the institution of the prosecution, be compounded by the Principal Chief Commissioner of Customs or Chief Commissioner of Customs on payment by the person accused of an offence, to the Central Government, of such compounding amount and in such manner as may be specified by the Rules. The proviso to Section 137(3) enumerates the disability clauses for entertaining the compounding application. It is not even the case of Revenue that the instant matter falls under any of these disability clauses. Notably the goods involved herein are freely importable. Unlike provisions for "Settlement of Case" which confers the power to grant immunity even from penalty, there is no such immunity from penalty under the Compounding of Offences Rules, 2005. Crucially, there is no embargo on making an application for compounding prior to the issuance of Show Cause Notice or the payment of customs duty and other dues. A compounding application, if made, can only be allowed by conferring immunity from prosecution upon the deposit of dues determined as payable including duty, interest and penalty, in addition to such compounding fee as may be determined and directed by the Compounding Authority. The principle of Natural justice is

intrinsically implicit in such a quasi-judicial exercise. This is one time remedy and its provisions are intended to ensure enforcement of the Act and the prevention of evasion of duty under the Customs Act. Unlike Section 127J, which renders an order of Settlement Commission final and conclusive without any provision for appeal, there is no such embargo in the Customs Act concerning compounding. It is a well settled legal position that in construing the provisions of a beneficial legislation, one should adopt the construction that advances, fulfils and furthers the object of the Act, rather than one which would defeat it. Applying the said principle, the compounding authority could not have rejected the application for compounding without granting personal hearing to the appellants, which is the undeniable mandate of 1st proviso to Rule 4(3) *ibid*.

27. So far as the alleged failure to make a full and true disclosure of facts are concerned, in my considered view, it was too early for the learned compounding authority to comment on this aspect without calling for a report from the reporting authority. Moreover it has nowhere come on record whether any such report has, in fact, been called for by the said authority.

28. I have perused the compounding application filed by the appellants before the Compounding Authority. A bare reading of the Application reveals detailed disclosure of facts, particularly at Sr.No.5 pertaining to:- *The violations of provisions of Customs Act, 1962 against which prosecution is instituted or*

contemplated for which application of Compounding-

"The Applicants apprehend their prosecution at the instance of Directorate of Revenue Intelligence, on allegations of being involved in mis-declaration of value, by filing manipulated invoices to evade Customs Duty, amounting to commission of offences punishable under Section 132 and 135 of Customs Act 1962.

Imports of Dry Fruits such as Walnuts, Almonds and Pistachio were made by the Applicant No. 1 from various countries, by filing Bills of Entry (EDI system) under the IE Code issued to Applicant firms.

Presently the investigations are ongoing in File No. DRI/MZU/F/JNT-32/Enq-17/2025 and on culmination thereof there is likelihood of launching criminal prosecution against the Applicants, and also issuance of Show Cause cum Demand Notice for adjudication of customs duty liability and penalty, due and payable in accordance with law.

Applicant no. 2 was arrested under Section 104 of the Act and is presently in judicial custody. It is trite that an arrest is inter alia to answer a criminal charge. Hence, apprehension of criminal prosecution cannot be ruled out.

Hence, the instant application under Section 137(3) is being filed before prosecution to avail one time opportunity by statutory route for the purpose of compounding."

29. In the compounding application, the appellants expressly detailed the nature of import, the method of filing bills of entry using IE code and the alleged mis-declaration. Furthermore, a declaration was unequivocally given by them, stating their willingness to pay the compounding amount as may be fixed by the compounding authority under sub-rule (3) of Rule 4 of the Customs (Compounding of Offences) Rules, 2005. Despite such willingness and disclosure made in the application, the compounding authority observed that the appellants have failed

to make full and true disclosure of facts. There is nothing in the impugned order to indicate precisely what facts were allegedly not fully or truly disclosed by the appellants. The absence of any such specific finding renders the aforesaid observation of the compounding authority unsustainable and arbitrary.

30. As no contrary facts or additional facts have been specified in the impugned order by the compounding authority, nor has anything contrary to the facts disclosed in the application been brought on record by revenue *prima facie* it appears that a full and true disclosure has indeed been made in the compounding application. In paragraph 12 of the said compounding application, the Appellants explicitly sought an opportunity of hearing to make further submissions. The said paragraph is extracted hereunder:-

"12. The Applicants say and submit that it may be just and proper, if the Applicants would be given a reasonable opportunity of being heard and to make further submissions in this regard."

and in paragraph 13 of the said application they undertook to pay compounding fees as well as customs duty with interest and penalty, finally held as due. The said paragraph is also extracted hereunder:

"13. The applicants undertake and state that they shall fully co-operate with this Hon'ble Compounding Authority, and shall pay such compounding fee as may be determined for the purpose of compounding, as well as the customs duty with interest and penalty, as may be finally held as due and payable in accordance with law."

Copies of the remand Applications dated 26.06.2025 and 27.06.2025 in File No.DRI/MZU/F/INT-32/Enq-17/2025 had also been annexed by the appellants alongwith their compounding application. In any case, before calling for a report from the Reporting Authority or the issuance of Show Cause Notice and adjudication thereof, it is patently premature to comment on the absence or otherwise of a full and true disclosure of facts. In the matter of *Union of India vs Anil Chanana; 2008(222) ELT 481 SC*, placed on record by Revenue, the Hon'ble Supreme Court has laid down that the Compounding Authority is bound to discharge the statutory duty of making proper enquiry by examining with care and caution. However, in the instant matter, such a fundamental exercise is conspicuously absent and the compounding authority failed to conduct any such enquiry. In *Anil Chanana's case (supra)* the applicant had failed to account for his possession of diamond ear rings and took self-contradictory steps, as narrated in the Judgment. A report from Reporting Authority was obtained by the Compounding Authority and personal hearing was also granted therein. In stark contrast, no such diligence has been undertaken by the Compounding Authority in the instant matter.

31. An identical issue namely the rejection of compounding application by relying on the 2nd proviso to Rule 4(3) *ibid* being premature and inadmissible due to the non-determination of duty/ fine/penalty, had been raised before the Hon'ble Bombay High Court in *Imran Latif Shirgawkar v. DRI, Mumbai -2019*

(368) *ELT 1052 (Bom.)*. In that case, the Hon'ble High Court while allowing the Petition filed by the Petitioner therein held that *'No bar on filing an application for compounding before issuance of show cause notice or adjudication thereof is contemplated in the Act. On the contrary Section 137(3) permits the filing of an application even before the issuance of show cause notice.'* The relevant paragraphs of the said decision are extracted hereunder:-

"20. Section 137(3) of the Customs Act, 1962 permits the filing of compounding application at any stage and provides that any offence under that Chapter may, either before or after the institution of the prosecution, be compounded by the Principal Chief Commissioner of Customs or Chief Commissioner of Customs on payment by the person accused of an offence, to the Central Government, of such compounding amount and in such manner of compounding as may be specified by the Rules. Proviso to the said provision contains the disability clauses for entertaining the application for compounding. It is not even the case of the respondent that the instant case falls under any of the disability clauses of said proviso. In the affidavit-in-reply filed on behalf of the respondent-compounding authority, the main objection taken is that as per the respondents, the compounding application filed by the petitioner under the provisions of the Customs Act is premature as the payment of duty/fine/penalty has not been determined so far. The affidavit of DRI further states that admittedly the show cause notice has not been issued and thus application is not maintainable, and it is premature. It is also stated that as per Rule 4(3) of the Compounding Rules, the petitioner's application for compounding, may or may not be allowed by the compounding authority; if it is allowed, the petitioner may get immunity from the prosecution.

20. We have perused the application form. Columns 9 to 12A only require the applicant to disclose whether show cause notice is issued, if it is issued, the details of duty demanded, whether show cause notice is adjudicated, if it is adjudicated, to disclose the duty confirmed and fine and penalty

imposed and whether paid or not. No bar on filing an application for compounding before issuance of show cause notice or adjudication thereof is contemplated in the Act. On the contrary, Section 137(3) permits the filing of an application even before the filing of prosecution. It is not the case of the DRI that the prosecution cannot be filed before the issuance of show cause notice. Therefore, we are satisfied that there is no bar in filing the compounding application. The prayers of the petitioner seeking direction regarding carrying out of adjudication and considering the application for compounding are reasonable. In our view, in the light of the express statutory provision permitting the compounding of offence and rule which prescribe the procedure for dealing with the application for compounding, the authorities cannot show disinclination to entertain and determine the application for compounding the offence alleged.

21. *So far as the merits of the adjudication or compounding application are concerned, the said will have to be decided by the adjudicating or compounding authority in accordance with law and the contentions of both sides would be open.*

22. *In the light of above facts and circumstances, we allow the writ petition by passing the following order:*

(1).....

(2) *The adjudicating authority, namely, the Commissioner of Customs (Preventive) shall give show cause notice to the petitioner, if necessary, and quantify and determine the amount payable as expeditiously as possible so that the same can be paid by the petitioner.*

(3) *The compounding authority, namely, the Chief Commissioner of Customs shall thereafter decide the petitioner's application for compounding of the offence as expeditiously as possible and in accordance with law..." (emphasis supplied)*

32. The aforesaid decision of the Hon'ble Bombay High Court is directly on the issue involved herein and nothing has been brought on record to show whether the same has been challenged by way of an appeal or whether it has been set aside or stayed by the Hon'ble Supreme Court. Therefore being the

jurisdictional High Court, I am bound to follow the same.

33. The contention on behalf of the Revenue that the said decision was not cited by the appellant in the compounding application is of no avail to them as they cannot plead ignorance of the judicial pronouncements in which they were the contesting respondent. As laid down by the Hon'ble Supreme Court in the matter of *Kamlakshi Finance Corporation Ltd.(supra)* the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Had the Compounding Authority granted hearing to the appellants before passing the impugned order, they would not have committed such a glaring mistake of not adhering to the decision of Hon'ble Bombay High Court in the matter of *Imran Latif Shirgawkar (supra)*.

34. In view of the principle laid down by the Hon'ble Bombay High Court, the Compounding Authority ought to have awaited the issuance of show cause notice and adjudication thereof and only thereafter could have taken a decision on the compounding application in accordance with law, after granting an opportunity of hearing to the appellants. This is particularly when the compounding is a one-time opportunity.

35. It is also a settled proposition of law that principles of natural justice are inherent in all quasi-judicial proceedings and any decision taken without affording an opportunity of hearing would render such decision unsustainable in law.

36. In view of the comprehensive discussions made hereinabove in the preceding paragraphs, the impugned order passed by the learned Chief Commissioner-Compounding Authority is set aside. The application for compounding is restored to the file of the Chief Commissioner of Customs, to be taken up for decision afresh, after determination of demand, interest and penalty by the adjudicating authority concerned. It is hereby directed that the compounding authority shall decide the said application strictly in accordance with law and in adherence to the principles of natural justice. It goes without saying that the learned Chief Commissioner – Compounding Authority shall be free to decide the same independently without being influenced by any observations made herein on the merit of the said application.

37. The appeals are disposed of accordingly.

(Pronounced in open Court on 15.07.2025)

(Ajay Sharma)
Member (Judicial)

//SR