

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85683 OF 2024

[Arising out of Order-in-Original No: 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Commissioner of Customs (Import – II)
New Customs House, Ballard Estate, Mumbai - 400001 *... Appellant*

versus

Sandeep Kumar Dhanuka
Century Exports Ltd
Flat/RM 1213, Houston Centre, 63 Mody Road
Tsim Sha Tsui, Kowloon, Hong Kong *...Respondent*

APPEARANCE:

Shri Mahesh Patil, Additional Commissioner (AR) for the appellant
Shri Kshitij Kasi Viswanath and Mr Suyog Bhawe, Advocates for the respondent

CORAM:

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

FINAL ORDER NO: 86350/2025

DATE OF HEARING: 19/08/2025
DATE OF DECISION: 22/09/2025

PER: C J MATHEW

This particular appeal, naming Shri Sandeep Kumar Dhanuka as respondent, has a ‘once upon a time’ backdrop to it and it is that very tale which prompted us to allow his application for early hearing of the dispute carried before the Tribunal by the duly constituted Committee of Chief

Commissioners who were of the opinion that the order¹ of Principal Commissioner of Customs (Adjudication), Mumbai, dropping proceedings in show cause notice² issued under section 124 of Customs Act, 1962, did not pass muster as legal and proper. The impugned notice was neither about recovery of duties of customs nor about confiscation of goods pending for clearance upon import but founded upon the premise that the goods, *i.e.* coal imported by M/s Reliance Infrastructure Ltd and M/s Rosa Power Supply Co Ltd not leviable to duties to the extent discharged by them and, thereby, deserving penalties under section 112 of Customs Act, 1962 as well as under section 114AA of Customs Act, 1962 not only on the importer but also on several other persons as could be brought within the ambit of those intended to be covered by those respective provisions upon confiscation under section 111(m) of Customs Act, 1962 relating to value, were amenable to scrutiny and revision by recourse to mechanism of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 without touching assessment undertaken on the bills of entry. The present respondent is one such incidental noticee even though, and admittedly, he had nothing to do with processing of the impugned goods after being unloaded at port of discharge.

2. The respondent did not participate in proceedings before the adjudicating authority; neither was the proceedings put on hold for that

¹ [order-in-original no. 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023]

² [no. DRI/MZU/F/INT-154/2014 dated 31st August 2016]

reason nor were any efforts ostensibly made for enabling representation therein. Ultimately, that was of no significance because the proceedings on the goods, and against principal noticee, were dropped and the value declared for assessment remained undisturbed; with that, the auxiliary and incidental noticees stood discharged from statutory jeopardy and scrutiny. However, the respondent, along with the principal noticee and the impugned goods, were sought to be brought back within statutory coverage by the review authority directing appeals before the Tribunal praying for imposition of the respective penalties. Here the distinction between the original round and the appellate round must be taken note of: as noticees, each of them were required to defend themselves against the allegations but, as respondents, no such obligation attended upon them with the impugned order having cleared them of any contravention of Customs Act, 1962. It was the impugned order that was on trial in the appeal of Commissioner of Customs (Import- II), Mumbai. And that order passed unscathed and undisturbed through the appellate determination; the proceedings initiated in the notice was not only dead but also now confirmed in order³ of the Tribunal as interred.

3. Though in that interring, this appeal was not, it was, nonetheless, as good as consigned. The appellant-Commissioner had no cause to pursue it in the face of the fate that the other appeals met. The respondent, seemingly and blissfully, ignorant of the developments before and after issue of the

³ [final order no. 85815-85818/2025 dated 25th March 2025]

impugned notice was no more concerned in pursuing disposal of a proceedings that, as far as he was concerned, was not only not initiated by him but also with no perceptible consequence to him. And there matters may have remained except for alleged exhumation by customs authorities who were either obviously ignorant of the present state of affairs or so bereft of respect for the process of law as to exclude any disposal disliked by them from acknowledged existence. As to which of these it was is for the authorities concerned to proffer. By issuing the impugned notice, the customs authorities brought themselves within the jurisdiction of the law and that process extends through the appellate schema which cannot be selectively applied and selectively discarded. Suffice it to say that the respondent preferred application for 'awakening the sleeping dog' in view of extreme prejudice caused to him in a closed matter that, for some, remained unclosed.

4. Allegedly, the respondent was detained on arrival in India basis 'lookout circular' purportedly issued in circumstances of either non-cooperation with the investigation or non-participation in the proceedings. The details are sketchy, the cause for detention of the respondent is not on record, the representative of the appellant-Commissioner was unable to throw light and we only have the submission on behalf of the respondent that he is unaware of any matter of investigation by customs authorities involving him. That may or may not be; but if it is, the existence of this inconsequential appeal with no leg to stand on, let alone survive, should not

be licence to infringe the rights of a person and nor should that be cause for encroachment thereto by a public authority. Accordingly, the plea for 'out of turn' disposal of the appeal was allowed and, considering the extraordinary circumstances of extreme *gravitas* and with consent of both sides, the appeal was taken up for disposal.

5. It is common ground that, in the light of dismissal of coordinate appeals of the Commissioner of Customs, nothing remains in the appeal either on fact and law. The appeal at the instance of the Committee of Chief Commissioners had been dismissed on facts, for lack of evidence of the value addition in the chain of transactions being anything other than normal business enhancements, and on law, for having contrived the provisions of section 111(m) of Customs Act, 1962 in a manner not contemplated by the legislation as far as the importer and imported goods were concerned; the auxiliary proceedings against Shri Sandeep Dhanuka does not survive the upholding of the order of the original authority. Learned Counsel for the respondent, however, pressed for consideration of their pleas on the illegality of the proceedings which, he vehemently argued, cannot be ignored by the Tribunal in the light of the manner in which the respondent is not only compelled to be represented in a matter concluded in his favour even without his participation but also retained by the customs authorities as a purported offender or contravener which flies in the face of judicial determination of pertinent goods not being liable for confiscation.

6. We are inclined to do so as there is sufficient grounds for attributing breach of judicial discipline. We have, time and again, adjured the highest administrative and supervisory authorities to accord judicial discipline the status of an article of faith and to have every customs authority function in the visible presence of a poster imprinted with the observation thus

'7. ...Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. 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 heirarchy. 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 assessees and chaos in administration of tax laws.

8. *We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.'*

of the Hon'ble Supreme Court in *Union of India and others v. Kamlakshi Finance Corporation Ltd [AIR1992SC711]*. We have to presume that there was a breach of judicial discipline; in the absence of averment to the contrary that the 'lookout circular' pertaining to this particular dispute remained in existence even after the original authority and the Tribunal found no evidence of contravention and that existence of present proceedings, of which the respondent was neither seemingly aware nor

unduly troubled as far as consequence was concerned, was purported reason for resumption of investigation, we would be failing as an authority obligated to *‘make orders or give directions as may be necessary or expedient to give effect or in relation to its orders or **to prevent abuse of its process** or to secure the ends of justice’* (emphasis supplied) as set out in rule 41 of Customs Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982.

7. Learned Counsel submitted that their concern is not the ‘look out circular’ itself but the dereliction in non-withdrawal thereof once the adjudication order had exonerated the importer, and the imported goods, from any taint of contravention that is. It was submitted that the empowerment to interfere with the rights of a passenger was not to be casually resorted to but in justifiable circumstances of prejudice to the Republic of India and the enforcement of the laws of the State; he argued that, correspondingly, that cautionary caveat must attend the retention of the interdiction once its purpose was invalidated through a process known to law.

8. At all events, it is well-known that ‘look out circulars’ are not an instrument governed by the statute; it is an instrument of convenience enabling the authorities at the border to detain ‘person of interest’ as an agency of the statutory authority empowered to require the presence of the particular person. Consequently, there is salutary responsibility to permit its

existence only so far as it does not interfere with legal process and every whit of responsibility devolves on the requisitioning authority to keep the border agency abreast of the legal developments. Failing to do so is dereliction of duty especially as it is the State which has to bear the consequences of any illicit interference. The continuance of such requisition is a matter of concern as the border agency is forced to interfere with the liberty of an individual in the belief that the reasons for detention exist; it is that authority which is, perforce, made answerable. The existence of an appeal at the instance of Committee of Chief Commissioners does not, *ipso facto*, exhume a closed proceeding, let alone resurrect an investigation that concluded with issue of show cause notice. If, as pointed out on behalf of the respondent, this dispute was cause for the interdiction, the failure of the initiating agency is not only palpable but should also be inquired into by the supervisory authorities failing which they would be accessories to irresponsible breach of rights. If, as pointed out on behalf of the respondent, this dispute was cause of interdiction, the detaining agency, not unaware of the disposal of the principal respondent, has ventured to do the 'unspeakable': renew an investigation that does not remain after commencement of proceedings under law. Not only is it disrespect for judicial determination, it is tantamount to contempt for the appellate process established by law which, needless to state, reaches to the highest court of the land. That this appeal remained is no ground for insinuating a justification; that it remained was only because its disposal was not pressed

but that the substance of the appeal stood discarded does not require rocket science for comprehension. What is left is sophistry and treading on the edges of the law. Our concern is that casual handling of the responsibility accompanying resort to this instrument of convenience cannot be left without accountability for any misuse. To do so would be to substitute rule of law with rule of men – anathema to our entire system of governance. The authority concerned may be ignorant; the authority concerned may be mischievous. That is not for us to say but for the organization that he is a part of to determine. We merely comply with our obligation under law to state that such interdiction, if pertinent to this appeal, is not statutorily sanctified.

9. Learned Counsel also submitted that the respondent, as a non-resident and holder of Hongkong passport allegedly connected with impugned goods merely as Director in the company that issued invoices from abroad used in the transactions, could not have been subjected to proceedings under Customs Act, 1962 as the jurisdiction under the said Act did not extend to places beyond the territory of India. It was pointed out that Customs Act, 1962 was altered to

‘1.....

*(2) It extends to the whole of India **and, save as otherwise provided in this Act, applies also to any offence or contravention committed thereunder committed outside India by any person.***’

(emphasis supplied)

only by amendment through Act 13 of 2018 with effect from 28th March 2018 whereas the impugned goods had been imported between 2011 and 2015. Accordingly, he submitted that the show cause notice itself was without jurisdiction in proposing to penalise the respondent and that the issue of 'look out circular' was void *ab initio* with the interdiction of the person an illegal act.

10. *Ex facie*, we have no hesitation in holding that charges could not have been framed under section 124 against the respondent. We have perused the show cause notice as well as the review order leading to this appeal; nowhere is it to be found that the respondent was responsible personally, or that the company that he, purportedly, was an official in were, for any act in the territory of India in connection with the goods or any declaration/submission in relation to the impugned goods. Not only is it accepted law that offences or contraventions cannot be retrospectively legislated but also that, in such circumstances of extension of jurisdiction beyond the territory of India, arrogating of jurisdiction cannot be in breach of legislative restraint conditioned by the Constitution in Article 37 read with Article 51. The circumstances of the legislated incorporation and the consequences of executive action, insofar as adherence to mutual acknowledgement of sovereignty is concerned, must guide its application.

11. Outrightly, we see that such extension of jurisdiction does not attend upon goods but only on persons. It is no less evident that such extension is

limited to offences and contravention. Customs law is, primarily, concerned with goods and persons are merely incidental to goods with concern only in the process relating to import or export of goods. From a perusal of Customs Act, 1962, which is bereft of definition of either 'offence' or 'contravention', we are compelled to conclude that this extension is restricted to occurrence of these expressions in the statute. We cannot also be impervious to other incorporations effected by the same amending enactment which, too, may have prompted this particular expansion of jurisdiction that, in effect, transmits criminalization under municipal law to persons residing in the exclusive sovereignty of another State. Of particular contextual relevance is the incorporation of section 109A of Customs Act, 1962 which permits overseeing of commission of an offence, peculiar to India, in overseas territory. We may well speculate this to be particular cause and intent of the concomitant amendment in section 1 of Customs Act, 1962. The limited submission on the issue of date of incorporation of the additional jurisdiction *vis-à-vis* the proceedings initiated against the respondent and sought to be reinstated in this appeal does not require such an extensive foray into legislative intent.

12. We find that the exclusive deployment of 'offence' in Customs Act, 1962 lies only in chapter XVI of Customs Act, 1962 which is not of relevance to the impugned proceedings. The other contingency for extending jurisdiction is 'contravention' and contravention is contravention only if penalty attaches to such contravention. Customs Act, 1962 is, first

and foremost, an enabling statute: for levy and collection of a constitutionally sanctioned impost. As with all such statutes, there are processes that, mutually between the tax collector and tax payer, convenience fulfillment of this enacted sanction to levy and while non-compliance with the levy is, undoubtedly, contravention, some of the process may also be. These contraventions, carrying penalties as they do, are specifically provisioned in, or generally occasioned by, chapter XIV of Customs Act, 1962. As far as section 111 of Customs Act, 1962 is concerned, the contravention warranting confiscation and, thereby, imposition of penalty under section 112 of Customs Act, 1962 is limited to episodes after entry into the territorial waters of India. That leaves just section 117 and section 114AA of Customs Act, 1962 which, at best, may be contraventions for which extra-territorial authority is assumed. Here, too, there is need for caution as the consequence of any penalty, that remains unacknowledged and unpaid, is recovery without which the jurisdiction is left incomplete. In such instances, recovery from contravener based on foreign soil requires assistance from another sovereign government. Such assistance may flow from treaty obligations or from domestic law of the State concerned. At all events, the contravention will have to be established beyond reasonable doubt for assurance of such assistance and not preponderance of probability that prevails in adjudicatory competence. Our purpose in expounding at such length on this aspect is to demonstrate that mere provisioning in section 1 of Customs Act,

1962 is not sufficient to acknowledge such recourse in a show cause notice. Mere provisioning is not authority under law because unimplementability, by jurisdictional conflict, reduces dignity of a law that tax authorities are bound to execute to its logical conclusion; anything less would be travesty.

13. Having delved into the limitations inherent in the amended law, and legislative cognizance thereof, the absence of retrospective application is not academic speculation but, from lack of legislative assertion, on unavoidable conclusion. In the circumstances of *ab initio* lack of jurisdiction, concluded investigation and adjudicated termination, subsequent affirmation thereto by the Tribunal of goods and declaration relating to goods not in contravention of Customs Act, 1962, this appeal is without merit warranting dismissal thereof.

(Order pronounced in the open court on 22/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*