

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85706 OF 2024

[Arising out of Order-in-Original No: 199/2023-24/Commr/NS-V/CAC/JNCH dated 2nd January 2024 passed by the Commissioner of Customs (NS-V), Nhava Sheva.]

Garrett Motion Technologies (India) Pvt Ltd
Plot No.4A, Raisonni Industrial Estate, Village Maan
Near Hinjewadi Phase-II, Pune - 411057

... Appellant

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Shri T Vishwanathan, Shri Akhilesh Kangazia and Ms Apoorva Parihar, Advocates
for the appellant

Shri D S Maan, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86354/2025

DATE OF HEARING:	24/03/2025
DATE OF DECISION:	23/09/2025

PER: C J MATHEW

All ‘once upon a time’ stories invariably used to end with ‘and

they live happily thereafter’; here, however, is one that seemingly did not.

2. Once upon a time, proceedings initiated under section 28 of Customs Act, 1962 attained closure only upon discharge of duty liability and penalty to the full extent proposed in the notice issued in exercise of empowerment by the recovery provision in the statute. Not anymore, for, apparently, and in the interest of mitigating adversal tax dynamics,

‘(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.’

was grafted into section 28 of Customs Act, 1962, and, thereby, hangs the tale in the dispute carried before us against order¹ of Commissioner of Customs (NS-V), Nhava Sheva by M/s Garret Motion Technologies (India) Pvt Ltd. The appeal is limited to the competence of the

¹ [order-in-original no. 199/2023-24/Commr/NS-V/CAC/JNCH dated 2nd January 2024]

adjudicating authority in proceeding with confirmation of the proposals in the show cause notice, among which is the interest be recovered under section 28AA of Customs Act, 1962 on differential duty of customs of ₹ 2,72,46,408, penalty of ₹ 2,97,11,021 under section 114A of Customs Act, 1962 and penalty of ₹ 2,70,00,000 under section 114AA of Customs Act, 1962 on the appellant.

3. According to Learned Counsel for appellant, they had discharged 15% of duty recoverable towards penalty on 15th February 2023 which was claimed to have been within the period of 30 days from receipt of the notice and payment intimated in writing as prescribed in

‘(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect

of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5)'.

of section 28 of Customs Act, 1962 entitling them to closure of proceedings.

4. As pointed out by Learned Authorized Representative, the adjudicating authority proceeded to decide on the proposals in entirety as the purported compliance with section 28(5) of Customs Act, 1962 was not within the stipulated period inasmuch as the show cause notice dated 3rd January 2023, not denied as having been received by them, was also communicated by email on 5th January 2023. The issue before us is limited to the effective date of service of notice for determination of the proceedings in the show cause notice to be deemed as conclusive. It is not in dispute that the differential duty proposed in the show cause notice dated 3rd January 2023 had been discharged in full; it is also not in dispute that the prescribed 15% of such amount had been duly deposited on 15th February 2023. The only issue for resolution is whether communication of notice by email on 5th January 2023 constitutes service or whether, by resort to the provisions of General Clauses Act, 1897, service was effected on 16th January 2023 as claimed by the appellant herein. There is no doubt that, in terms of section 17 of General Clauses Act, 1897 that the appellant is not in the wrong. It is also evident from the record that the said notice was

dispatched to abhijeet.pattan@garettmotion as confirmed by the appellant herein through application made under the Right to Information Act, 2005. This is also admitted as set out in

'22.2. Further, in the communications made, by the importer with the department vide letters dated 05.04.2023 and 15.06.2023, which are reproduced below, the importer had claimed that they received the S.CN on 17-01.2023. However, the importer later went on to claim to have received the SCN on 16.01.2023 during the Personal Hearing. Be that as it may, I find that the Show Cause Notice, along with the relevant Annexures and RUDs, was emailed to Shri Abhijeet S. Pattan, Manager Trade Compliance on email id abhijeet.pattan@garettmotion.com from the office email id cus-grp5bmumbai2@gov.in on 05.01.2023. Section 153(l)(c) of the Customs Act, 1962 states, "An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:- (a)...(b)...(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person". Hence, I find that the Hon'ble Supreme Court was served on, and received by the noticee on 05.01.2023.'

5. On the other hand, the appellant claims, and verifiable from notation in the show cause notice, email should have been sent to abhijeet.pattan@garettmotion but the adjudicating authority proceeded to find that the

'22.3. Accordingly, I find that the importer has not been truthful about the actual date of receipt of the SCN by them. I am, therefore, constrained, to not consider the importer's

request for considering the case under the provision of Section 28(6) of the Customs Act, 1962. Section 28(6) is invoked when duty and penalty are paid under Section 28(5) and Section 28(5) clearly mentions that the penalty too must have been paid "within thirty days of the receipt of the notice" and the proper officer is informed of such payment. Since the penalty payment has been made in JNCH on 15.02.2023, which is post thirty days of receipt of the SCN, I am unable to accept the request of closure under Section 28(6) of the Customs Act, 1962.'

6. The proceedings were taken to a conclusion other than that stipulated in section 28(6) of Customs Act, 1962 only on the premise of the appellant not having been controverted assertion of service of the notice in their submission. The appellant had complied with the pre-requisite for deemed conclusion of proceedings on 15th January 2023 which, admittedly, is beyond 30 days from the notice. Nothing has been placed on record by the adjudicating authority, or by the Learned Authorized Representative, that service of notice by email suffices for the purposes of section 28(1) and section 28(4) of Customs Act, 1962. In any case, there is no controverting of the e-mail address to which the show cause notice should have been sent and the one which the notice was apparently sent to; the displacement of two letters of the alphabet and, particularly, with the deployed combination being more common is, probably, a clerical mistake. Nonetheless, it does not constitute acceptable dispatch by email and, in the circumstances, does not constitute service of notice for the purpose of section 28(5) of Customs Act, 1962. On the other hand, it is not in dispute that the hard copy was

received by the noticee only on 16th January 2023. The noticee had, complied with the provisions of section 28(5) of Customs Act, 1962 and denial of consequences is incorrect conclusion by the lower authority.

7. Accordingly, the impugned order is set aside and the appeal allowed.

(Order pronounced in the open court on 23/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*