CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86419 OF 2025

[Arising out of Order-in-Original No: 39/2025-26/Commr/NS-I/CAC/JNCH dated 15th April 2025 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Kkalpana Industries India Ltd
Ground Floor, 2B Pretoria Street, Kolkata -700071 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Mohit Raval, Advocate for the appellant

Shri Mahesh Y Patil, Additional Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85090/2026

DATE OF HEARING:	13/01/2026
DATE OF DECISION:	13/01/2026

PER: C J MATHEW

M/s Kkalpana Industries India Ltd, who had been fastened with differential duty liability of ₹ 18,27,62,282 under section 28(4) of

Customs Act, 1962, along with interest thereon under section 28AA of Customs Act, 1962 besides being imposed with penalty of like amount under section 114A of Customs Act, 1962 in addition to having their goods confiscated under section 111 of Customs Act, 1962 subject to redemption on payment of fine under section 125 of Customs Act, 1962, is in appeal before us against order[1] of Commissioner of Customs (NS-I), Nhava Sheva for denying the benefit in section 28(6) of Customs Act, 1962 despite having fulfilled the condition precedent for closure of the proceedings in terms of section 28(5) of Customs Act, 1962.

2. According to Learned Counsel for appellant, the show cause notice, issued on 29th May 2023, proposed demand and recovery of differential duty arising from denial of benefit of notification[2] consequent to ASEAN India Free Trade Agreement (AIFTA). It was submitted that the differential duty liability had already been discharged well before, on 16th November 2021 and 25th November 2022, and while, in circumstances of the ingredients for invoking section 28(4) of Customs Act, 1962 precluding recourse to section 28(3) thereon, it was incumbent upon the adjudicating authority to acknowledge that interest of ₹ 64,45,541 had been discharged on 4th July 2023 and tantamount to substantive compliance and eligibility for

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[1] [order-in-original no. 39/2025-26/Commr/NS-I/CAC/JNCH dated 15th April 2025]
[2] [no. 46/2017-Cus dated 1st July 2017]

reduced penalty. According to him, the said show cause notice was received on 7th June 2023 and the delivery manifest of Department of Posts pertaining to the beat postman clearly shows handing over on 7th June 2023.

3. We have heard Learned Authorized Representative.

4. In the impugned order, notwithstanding the disposal of the show cause notice on merit the recording of

> *'4.2 I find that in terms of the principle of natural justice, an opportunity for PH was granted to the Noticee on 14.05.2024. This personal hearing was not attended by the Noticee, I note that the adjudicating authority has to take the views/objections of the noticee on board and considered before passing the order. In the instant case, the noticee did not put up their views/objections before the adjudicating authority within timeline. In absence of the same, the competent authority decided to extend the time limit for the adjudication of the case under section 28(9) of the Customs Act. 1962, so that the Noticee would get ample time for submission of their defence reply (i.e. their views/objection) against the SCN. Therefore, the time limit of the case was extended up to 28.05.2025 as per section 28(9) of the Customs Act, 1962 with the approval of the Chief Commissioner of Customs, Zone-II on 17.05.2024. Subsequently, opportunities for PH were granted to the Noticee on 23.12.2024 and 14.01.2025. Shri Prakash Sahoo, authorised representative of the noticee attended the Personal Hearing through virtual mode on 14.01.2025 on behalf of the noticee. The recordings of the personal hearing are placed in para 3 of this order.'*

is significant.

5. The elapse of time between the purported date of issue of the show cause notice *i.e.* 29th May 2023 and the claimed date of receipt is 8 days. The appellant had also placed on record before the adjudicating authority that the delivery diary of the office concerned indicates delivery on the date claimed by the appellant. Section 28(5) of Customs Act, 1962 is abundantly clear in requiring the payment to be made within 30 days of receipt of the notice and intimation to the proper officer. It was communicated on 4th July 2023 as response to the show cause notice. The adjudicating authority has proceeded on the assumption that it was the responsibility of the appellant herein to demonstrate evidence of receipt. The show cause notice does not bear date of issue and in the absence of certainty, with date of show cause notice taken as the date of issue thereon, there does not appear to be sufficient cause for doubting the authenticity of the documents of service produced by the appellant before the adjudicating authority. It was, therefore, incumbent upon the adjudicating authority to take note and conclude proceedings in accordance with section 28(5) of Customs Act, 1962. For having failed to do so the impugned order lacks sanctity of law and is, accordingly, set aside to allow the appeal.

(Operative part of the order pronounced in the open court on 13th January 2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*