CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51470 OF 2019

[Arising out of the Order-in-Original No. 8/COMMR./CUS/ADJ-I/2018-19 dated 19/03/2019 passed by Commissioner of Customs, Indore-452001.]

M/s Prestige Polymers Pvt. Ltd., ...Appellant
(Through its Director – Shri Manish Bhalla)
D-62, Special Economic Zone,
Phase-I, Pithampur, Distt. Dhar,
Madhya Pradesh – 454 775.

Registered Office at :
B-2/15, Model Town-I,
Delhi – 110 009.

Versus

Commissioner of Customs, ...Respondent
Manik Bagh Palace, Indore,
Madhya Pradesh – 452 001

WITH
CUSTOMS APPEAL NO. 51471 OF 2019

[Arising out of the Order-in-Original No. 8/COMMR./CUS/ADJ-I/2018-19 dated 19/03/2019 passed by Commissioner of Customs, Indore-452001.]

Shri Manish Bhalla, Director of .....Appellant
M/s Prestige Polymers Pvt. Ltd.,
D-62, Special Economic Zone,
Phase-I, Pithampur, Distt. Dhar,
Madhya Pradesh – 454 775.

Registered Office at :
B-2/15, Model Town-I,
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Versus

Commissioner of Customs, ...Respondent
Manik Bagh Palace, Indore,
Madhya Pradesh – 452 001

AND
CUSTOMS APPEAL NO. 51472 OF 2019

[Arising out of the Order-in-Original No. 8/COMMR./CUS/ADJ-I/2018-19 dated 19/03/2019 passed by Commissioner of Customs, Indore-452001.]

Shri Chirag Kapoor, ...Appellant
S/o Shri Harsh Kumar Kapoor
R/o P-28, Ordinance Factory, Murad Nagar,
Ghaziabad – 201 206. U.P.

Versus

Commissioner of Customs, ...Respondent
Manik Bagh Palace, Indore,
Madhya Pradesh – 452 001

APPEARANCE:

Ms. Anjali Jha Manish and Shri Priyadarshi Manish, Advocates for the appellant.
Shri P.R.V. Ramanan, Special Counsel and Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50326-50328/2025

DATE OF HEARING : 21.11.2024
DATE OF DECISION: 19.02.2025

P.V. SUBBA RAO

The order dated 19.3.2019 passed by the Commissioner of CGST & Central Excise, Indore[1] deciding the proposals in the show cause notice dated 10.2.2017[2] is assailed in these three appeals filed by M/s. Prestige Polymers Pvt. Ltd.[3] (Appeal No. 51470 of 2019), Shri Manish Bhalla[4] (Appeal No. 51471 of 2019) and Shri Chirag Kapoor[5] (Appeal No. 51472 of 2019).

2. We proceed to examine the decisions in the impugned order qua each of the appellants, the undisputed facts of the case and undisputed legal position, each of the issues in

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1. impugned order
2. SCN
3. Prestige
4. Bhalla
5. Kapoor

dispute and the submissions advanced by both sides with respect to each of them and decide.

The impugned order

3. The operative part of the impugned order qua each of the appellants is as follows:

Qua Prestige

(i) Basic Customs Duty along with differential CVD and education Cess amounting to Rs 36,57,797/- is hereby confirmed and ordered to be recovered from notice no. 1 under section 28(4) of the Customs Act, 1962[6].

(ii) Special additional duty amounting to Rs.16,09,431/- is confirmed and ordered to be recovered from the Noticee no. 1 under section 28(4) of the Customs Act, 1962.

(iii) The noticee no.1 shall also pay interest under section 28 AA of the Customs Act, 1962.

(iv) I also impose penalty of Rs.51,68,228/- plus amount equivalent to interest payable on such confirmed amount of duty mentioned at (iii) of the order till the date of payment of such tax under section 114A of the Customs Act, 1962.

Qua Shri Bhalla

(v) I impose a penalty of Rs.50,00,000/- on the notice no. 2 under section 114AA of the Customs Act, 1962.

Qua Shri Kapoor

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6. Customs Act

(vi) I impose a penalty of Rs. 10,00,000/- on notice no. 3 under section 114AA of the Customs Act, 1962.

Undisputed facts of the case and legal position

4. Prestige is an authorised unit in the Special Economic Zone[7], Indore. Shri Bhalla was the Director of Prestige and Shri Kapoor was the Authorised Officer of Prestige during the relevant period. Prestige imported LED display panels of televisions of Malaysian origin through eight Bills of Entry without paying any duty, brought them into its SEZ unit and then cleared them under six Bills of Entry to buyers in Domestic Tariff Area[8]. In these six Bills of Entry, Prestige had not paid Basic Customs Duty[9] and Special Additional Duty of Customs[10] claiming the benefit of Notification No.12/2012-Customs (Sl. No. 432) dated 17.3.2012 as amended, and Notification No. 45/2005-Cuss dated 16.5.2005 as amended.

5. It was felt by the department during audit that Prestige had not paid BCD and SAD on the six Bills of Entry by wrongly claiming the benefit of the Notifications. Accordingly, the SCN dated 10.2.2017 was issued to the three appellants (Prestige, Bhalla and Kapoor) which culminated in the impugned order. The six Bills of Entry on which the duty has been demanded and which were listed at Annexure A to the SCN are as follows:

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7. SEZ
8. DTA
9. BCD
10. SAD

S. No.	Bill of Entry	Duty demanded (Rs.)
1	2126 dated 05.5.2016	16,16,092
2	3002 dated 31.3.2016	10,77,620
3	3716 dated 25.4.2016	11,48,644
4	4265 dated 10.5.2016	10,18,006
5	6514 dated 19.7.2016	1,84,735
6	6234 dated 30.7.2016	2,22,130
	Total	**52,67,228**

6. Goods imported into SEZ are regulated by **Special Economic Zones Act, 2005**[11] and **Special Economic Zones Rules, 2006**[12]**.** As per section 53 of SEZ Act, SEZ shall be treated as a territory outside the Customs territory of India for the purpose of undertaking the authorised operations. No duty needs to be paid on goods imported into SEZ for authorised operations but when any goods are cleared from SEZ to DTA, customs duty should be paid as applicable to goods imported into India.

7. Section 30 of SEZ Act deals with clearance of goods to DTA by SEZ units and it also empowers the Central Government to make rules for the purpose. Chapter V (Rules 47 to 52) of the SEZ Rules specify the conditions subject to which goods may be removed from SEZ unit to DTA. SEZ Rule 47 permits sale of goods in DTA and SEZ Rule 48 prescribes the procedure for such sales. SEZ Rule 48 requires the DTA buyer to file a Bill of Entry for Home Consumption but also

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11. SEZ Act
12. SEZ Rules

provides that the SEZ unit may file the Bill of Entry on the basis of an authorisation from DTA buyer.

8. In this case, not only were the Bills of Entry filed by Prestige but even the duty was assessed and paid by it and not by the buyers. The sale of goods took place after clearance at the buyers' place.

Issues in dispute

9. Learned counsel for the appellants vehemently contested the impugned order on the following questions which we shall examine:

(i) The Commissioner had no jurisdiction to adjudicate the issue regarding demand of duty against the DTA sale made by SEZ unit under section 30 of the SEZ Act, 2005;

(ii) The Additional Commissioner had no jurisdiction to issue the SCN demanding duty against DTA sale made by SEZ unit under section 30 of the SEZ Act, 2005;

(iii) The Additional Commissioner had no pecuniary jurisdiction to issue SCN at the relevant date where the demand of duty is more than Rs. 50 lakhs;

(iv) The Commissioner had no jurisdiction to confirm demand under section 28(4) of the Customs Act because the SCN was issued under section 28(1) and no corrigendum was issued to the SCN;

(v) Misconstruction/ misinterpretation of the provision of the Notification does not amount to suppression of facts to invoke demand enlarging the period for issuing the SCN under section 28(4) of the Customs Act;

(vi) Misconstruction/misinterpretation of the provision of the Notification does not amount to suppression of fact and misstatement for imposition of penalty under section 114AA of the Customs Act;

(vii) Penalty under section 114A of the Customs Act cannot be imposed, if the demand has been raised under section 28(1) of the Customs Act;

(viii) The adjudicating authority failed to deal with Notification No. 18/2011 which amended the earlier Notification No. 45/2005-Cus dated 16.5.2005 since the Notification No. 18/2011 substituted the words "produced or manufactured in" with the words "cleared from".

(ix) Since Prestige was the exporter and not the importer in the DTA Bills of Entry, no duty could be demanded from it;

(x) Notification No. 12/2012-Cus dated 17.3.2012 (S.No.432) exempts BCD unconditionally and Additional Duty of Customs subject to the condition indicated therein and Prestige had paid the additional duty of customs as it had not fulfilled the condition. This position has been accepted by the Commissioner in paragraph 28 of the impugned order but he still confirmed the demand of Basic Customs Duty.

Issue 1: Jurisdiction of the Commissioner to adjudicate the matter relating to the demand of duty where the sale was under section 30 of the SEZ Act

10. Learned counsel for the appellants submitted as follows:

(i) the demand was raised against Prestige in respect of the Bills of Entry which it had filed on behalf of the buyer who is the importer:

(ii) In the event of a conflict between the provisions of SEZ Act and the Customs Act, the SEZ Act would prevail by virtue of section 51 of the SEZ Act;

(iii) The SCN has not been issued by the specified officer nor was the adjudication done by him under the SEZ Act and hence the proceedings are without jurisdiction;

(iv) The specified officer has been defined in Rule 2(zd) of the SEZ Rules and in the absence of conferment of power either on the Additional Commissioner who issued the SCN or on the Commissioner who adjudicated the SCN they had no jurisdiction to issue the SCN and to adjudicate it respectively;

(v) Prestige had cleared the goods under section 30 of the SEZ Act;

(vi) Prestige is not the importer and hence even the BCD cannot be charged from it;

(vii) Since no power has been conferred on the Commissioner as specified officer of the SEZ Act, the adjudication order is issued without jurisdiction and for that reason, the entire proceedings are vitiated.

11. Learned special counsel appearing for the department strongly rebutted the submissions of the learned counsel and submitted as follows:

(i) The SCN and the impugned order do not relate to the authorised operations within the SEZ and therefore, the provisions of section 51 of the SEZ Act would not apply;

(ii) Therefore, the proceedings demanding duty to be paid under section 28 of the Customs Act are legal and proper;

(iii) Section 30 (1) of the SEZ Act provides that in respect of DTA clearances, the goods would be chargeable to all Customs duties as leviable.

(iv) SEZ Rule 25 also provides that if the entrepreneur or developer does not utilise the goods or services on which exemptions, drawbacks and concessions have been availed for the authorised operations or is unable to duly account for the same, the entrepreneur or developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the

relevant provisions of the Custom Act and other enactments. SEZ Rule 25 is in consonance with section 28 of the Customs Act and there is no inconsistency. Therefore, section 51 of the SEZ Act would not be attracted.

(v) The goods were cleared filing 8 Bills of Entry from Inland Container Depot[13], Pithampura, Indore and brought into the SEZ unit of Prestige. ICD Pithampura falls within the jurisdiction of Commissioner of Customs, Indore.

(vi) In these 8 Bills of Entry, Prestige claimed exemption from BCD under Notification No. 12/2012 and the goods were allowed to be moved into the SEZ area. The goods were thereafter verified as per Rule 29 of the SEZ Rules and the out-of-charge was given in respect of these Bills of Entry by the Preventive Officer of Customs posted at the gate of the SEZ.

(vii) Exemption from BCD under Notification No. 12/2012- Cus is available only to LCD, LED and OLED panels for manufacture of televisions and that too subject to the condition that the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996[14] is followed

(viii) Prestige neither used the goods to manufacture televisions nor did it follow the procedure under IGCR but instead sold the imported goods as such in the DTA to other traders.

(ix) For this purpose, Prestige filed 6 DTA bills of Entry. The DTA fell clearly within the jurisdiction of the

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13. ICD
14. IGCR 1996

Commissioner of Customs who passed the impugned order.

12. We have considered the submissions advanced by both sides, the records of the case and the relevant legal provisions.

13. The SEZ Act was passed in order to promote exports. The long title of this Act reads as follows:

> " An Act to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto."

13. If the purpose of this Act indicated in its long title is kept in view, the provisions of the SEZ Act and SEZ Rules can be easily understood. SEZ Act is not meant to make SEZ a conduit to import goods into India but is meant to promote exports - either by manufacturing goods or otherwise, such as by trading them internationally. However, it is not always possible to export all goods which are either manufactured within the SEZ area or imported into the SEZ area and therefore, an option of selling the goods to buyers in the DTA is also provided in Section 30 of the SEZ Act. A deeming fiction has been created by Section 53 of the SEZ Act whereby SEZ shall be treated as a territory outside the Customs territory of India for the purposes of undertaking authorised operations.

14. Authorised operations is defined in section 2(c) of the SEZ Act as follows:

> **Section 2: Definitions: In this Act, unless the context otherwise requires,-**

> **(c) "authorised operations" means operations which may be authorised under sub-section (2) of section 4 and sub-section (9) of section 15;**

15. Section 53 of the SEZ Act treats SEZ in two different ways- both as a territory outside the customs territory of India and also as the Customs port/airport/ ICD, etc. It reads as follows:

> **Section 53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.**
>
> (1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
>
> (2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):
>
> Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.

16. Section 7 of the Customs Act provides for notification of Customs ports, airports, ICDs, etc. through which alone goods can be imported or exported. It reads as follows:

> **7. Appointment of customs ports, airports, etc.**—
>
> The Board may, by notification in the Official Gazette, appoint—
>
> (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(aa) the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

(c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;

(d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

(e) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;

(f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

(2) Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 (32 of 2003) shall, on such commencement, be deemed to have been issued under the provisions of this section as amended by section 105 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section.

17. In the absence of any definition of 'customs territory' in either the SEZ Act or in the Customs Act, the expression 'customs territory of India' under the SEZ Act should also be understood as 'outside the control of Customs officers' and treated as if the authorised operations are taking place outside India. No duty is therefore, chargeable on any goods imported into the SEZ and if the goods are moved from SEZ into DTA, a

Bill of Entry is to be filed and duty is to be paid as if the goods were imported into India. This presumption is only insofar as it pertains to 'authorised operations', i.e., operations which the developer or entrepreneur is authorised to carry out in the SEZ. If the activities are not related to the authorised operations, then SEZ is not deemed to be 'outside the customs territory of India' even as per section 53 of the SEZ Act.

18. Section 51 of the SEZ Act overrides any contrary provisions in the other laws. It reads as follows:

> **Section 51. Act to have overriding effect.**
>
> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

19. Evidently, section 51 of SEZ Act does not negate all laws of the land within the SEZ. By virtue of section 51, SEZ Act overrides other laws only to the extent there is any inconsistency between the SEZ Act and other laws. If the other laws are not inconsistent with SEZ Act, they will continue to be operational.

20. Thus, section 51 read with section 53 of the SEZ Act makes it clear that to the extent of authorised operations, SEZ will be treated as 'outside the Customs territory of India'- no more and no less. Thus, the Commissioner of Customs will not have jurisdiction only to the extent of the authorised operations within the SEZ. The words of both section 51 and

53 are fully in consonance with the object of the Act as is evident from its long title- to promote exports. SEZ cannot be treated as outside the Customs territory of India to carry on unauthorised operations and activities. In case of such activities, SEZ itself will be treated as Customs port, airport, ICD, etc. under section 7 of the Customs Act. Sub-section (2) of Section 53 makes this position explicit.

21. Similarly, Section 26 of the SEZ Act exempts goods imported into the SEZ for authorised operations from duties of Customs. It reads as follows:

> **Section 26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.**
>
> (1) Subject to the provisions of sub-section *(2)*, every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-
>
> (a) **exemption from any duty of customs**, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, **to carry on the authorised operations by the Developer or entrepreneur**;
>
> (b) **exemption from any duty of customs**, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, **on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;**
>
> (c) **exemption from any duty of excise, under the Central Excise Act, 1944** (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, **to carry on the authorised operations by the** Developer or entrepreneur;

(d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India **to carry on the authorised operations by the Developer or entrepreneur**;

(e) **exemption from service tax under Chapter V of the Finance Act, 1994** (32 of 1994) on taxable services provided to a Developer or Unit **to carry on the authorised operations in a Special Economic Zone;**

(f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 (23 of 2004) in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;

(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(2) The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section *(1)*.

22. Evidently, if goods are imported into the SEZ but not to carry on any authorised operation, insofar as such goods are concerned, neither the exemption from duty under section 26 of SEZ Act nor the stipulation under section 53 of SEZ Act that SEZ shall be treated as outside the Customs territory of India would apply. Customs Act and its provisions would apply in such cases.

23. The submission of the learned counsel for the appellant is that since the goods were first taken by filing Bills of Entry into the SEZ area and thereafter they were removed by filing

DTA Bills of Entry, the Commissioner of Customs would have no jurisdiction is not correct. Firstly, removal of goods from SEZ into DTA is permitted though it is not the object of SEZ Act. Since the deeming fiction under section 53 is that the SEZ is treated as outside India, a Bill of Entry has to be filed to clear the goods to DTA. Thus, the goods which are cleared to DTA are at par with any other goods which are imported from elsewhere in the world. Simply because the goods were cleared from SEZ and in this case, actually routed through the SEZ (as they were taken into the SEZ unit and in a few days moved to DTA), does not and cannot place the goods on a better footing than the goods which are imported into India from elsewhere.

24. Once the goods are imported into the DTA, all duties as applicable have to be paid and if there is any short payment in such duties appropriate action can be taken. The goods in this case have been brought into the DTA falling under the jurisdiction of the Commissioner of Customs, Indore. If any duty is short paid, he has both the authority and duty to recover it. Merely because the goods were removed from SEZ unit as provided under section 30 of the SEZ Act and not directly imported from outside India would make no difference.

25. Another submission of the learned counsel is that the Commissioner was not the Specified Officer under SEZ Rule

2(zd) and therefore, he was not authorised to adjudicate the SCN and confirm demand of duty. This Rule reads as follows:

> **2. Definitions:** (1) In these rules, unless the context otherwise requires-
>
> (zd) " Specified Officer" in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone;

26. We find nothing in the SEZ Act or SEZ Rules which stipulates that the "Specified Officer" alone can issue a notice for demand of duty under Section 28. On the other contrary, SEZ Rule 47(5) provides for the jurisdictional officers to take action under the Customs Act. It reads as follows:

> **47. Sales in Domestic Tariff Area.-**
>
> *****
>
> (5) Refund, **Demand**, Adjudication, Review and Appeal with regard to matters **relating to authorised operations under the Special Economic Zones, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities** in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued there under.

27. We also find that learned Special Counsel for the Revenue is correct in his submission that SEZ Rule 25 requires the entrepreneur to refund an amount equal to the benefits of exemption claimed if the goods were not used for the authorised operations. This is consistent with Section 28 of the Customs Act which also provides for recovery of duty not paid, short paid, etc.

28. It is clear from the above legal provisions that if goods imported into an SEZ are not used for the authorised operations but are sold in Domestic Tariff Area, duty has to be paid. If duty is not paid or short paid and as a result a demand has to be raised, it must be done as per the Customs Act by the jurisdictional Customs Officers. There is no separate provision under SEZ Act for recovery of duties not levied, not paid, short levied, short paid or erroneously refunded nor is there any provision stating that section 28 would not apply. Therefore, section 28 of Customs Act applies for recovery of duties not paid, short paid etc., even in SEZ units.

29. In any taxation, there are three elements- (a) the charge of duty which comes from the charging section and other provisions of the Act, (b) the adjudication process which crystallises and determines how much is the charge and (c) the mechanisms for recovery if the dues which are adjudicated are not paid voluntarily.

30. The charge of the duty under the Customs Act is overruled by virtue of section 26 of the SEZ Act insofar as it pertains to authorised operations. The charge would continue on other goods - such as the goods in this case which were not used for authorised operations but were sold in DTA. The adjudication process through a notice under section 28 of the Customs Act would also apply in full force and there in nothing to the contrary in the SEZ Act.

31. The specified officer, i.e., the Joint/Deputy/Assistant Commissioner posted in the SEZ has certain functions and they do not include issuing notices under section 28.

32. Even if the DTA Bills of Entry are assessed by the specified officers or authorised officers, such assessment is a process under section 17 of the Customs Act. The procedure of issuing a notice to demand duty not paid under section 28 is a process distinct and separate from assessment under section 17, as has been held by the Supreme Court in **Union of India** versus **Canon India Pvt. Ltd.**[15]. The relevant portion of the judgment is reproduced below:

> "Para 164.
> …..
> (b) **As discussed above, the functions of assessment and re-assessment under Section 17 and the recovery of duty under Section 28 are distinct.** Therefore, the exercise of functions under Section 17 can only act as a "jurisdictional fact" for the purpose of excluding the jurisdiction of other proper officers empowered under that section for the exercise of the rest of the functions specified therein. Similarly, the exercise of the function of issuing show cause notices under Section 28 by a particular proper officer serves as a jurisdictional fact which would exclude the jurisdiction of other proper officers empowered under Section 28."

33. Therefore, neither any provision of SEZ Act nor any provision of Customs Act excludes the jurisdiction of the Commissioner of Customs under section 28 in respect of the goods sold from an SEZ unit in DTA. **There is therefore, no**

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15. Review Petition No. 400 OF 2021 in Civil Appeal No. 1827 OF 2018

force in the submission of the learned counsel that the Commissioner of Customs lacks jurisdiction to adjudicate the matter and to issue a notice under section 28.

Issue 2: Jurisdiction of the Additional Commissioner to issue a notice under section 28 in a matter where the sale was under section 30 of the SEZ Act

34. Learned counsel also contested the jurisdiction of the Additional Commissioner to issue the SCN on the same grounds on which he contested the jurisdiction of the Commissioner to adjudicate the matter.

35. In view of our findings on the question of jurisdiction of the Commissioner to adjudicate the matter, we find no reason to take a different view regarding the jurisdiction of the Additional Commissioner to issue the SCN.

Issue 3: Jurisdiction of the Additional Commissioner to issue SCN demanding duty in excess of Rs. 50,00,000/-

36. We do not find anything in section 28 to support this argument.

Issue 4: Commissioner confirmed the demand under section 28(4) of the Customs Act when the SCN was issued under section 28(1) and no corrigendum was issued to the SCN

37. Learned counsel submitted that the impugned order cannot be sustained because the SCN was issued by the Additional Commissioner under section 28 (1) whereas the impugned order confirmed the duty under section 28 (4).

38. We have examined the SCN. It was issued under 'proviso to section 28(1)' and NOT under section 28(1) as asserted by the learned counsel. Section 28 was amended in 2011. Both before and after the amendment, this section provided for issuing a notice for recovery of duty. Both before and after amendment, a normal time limit was prescribed and a provision has been made to demand duty invoking extended period of limitation of five years if one of the aggravating factors viz., collusion, wilful misstatement or suppression of facts was present.

39. Before 2011, section 28(1) provided for demand of duty and its proviso indicated that extended period of limitation of five years could be invoked in case of collusion, wilful mis-statement and suppression of facts. After 2011, section 28(1) provided for demanding duty in normal cases and section 28(4) provided for demanding duty invoking extended period of five years in case of collusion, wilful mis-statement or suppression of facts. The relevant provisions of section 28 before and after 2011 are reproduced below:

Before 8.4.2011

28. Notice for payment of duties, interest, etc. - (1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short- levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty has not been levied or has been short-levied 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 employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words 'one year' and 'six months', the words 'five years' were substituted:

Explanation. -Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or six months or five years, as the case may be.

After 8.4.2011

Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) ******
(3) ******
(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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40. SCNs demanding duty alleging collusion, wilful misstatement or suppression of facts could be issued under the proviso to section 28(1) before the 2011 amendment and could be issued under 28(4) after the amendment. There is also a proviso to section 28(1) after the 2011 amendment but that deals with some pre-notice consultations. It also needs to be pointed out that even if the demand falls within the normal

period of limitation, if any of the elements of collusion, wilful misstatement or suppression of facts is alleged to be present, demand can be issued under section 28(4) [or the proviso to section 28(1) before the amendment] as these provisions only enlarge the period of limitation period and do not stipulate that demand under them cannot be issued within the normal period. Clearly, the allegation in the SCN in this case is that one of these elements was present although the entire period of limitation was within the normal period of limitation.

41. The SCN was clearly not issued under section 28(1) as asserted by the learned counsel but was issued under the proviso to section 28(1). Instead of quoting the amended provision of section 28(4) in the SCN, the Additional Commissioner quoted the unamended provision [proviso to section 28(1)]. In the impugned order, the Commissioner quoted correctly the amended provision of section 28(4).

42. The question which arises is if the allegations in the SCN and the findings in the impugned order are clear, whether merely citing the unamended provision in the SCN instead of the amended provision will invalidate the order. The settled legal position is that it will not. The Supreme Court held in **J. K. STEEL LTD.** versus **UNION OF INDIA**[16] as follows:

> 45. I shall now take up the question of limitation. The written demand made on March 21, 1963 purports to have been made under Rule 9(2) of the rules. Therein the assessing authority demanded steel ingot duty which according to it the assessee

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16. 1978 (2) E.L.T. J355 (S.C.)

had failed to pay. Quite clearly Rule 9(2) is inapplicable to the facts of the case. Admittedly the assessee had cleared the goods from the warehouse after paying the duty demanded and after obtaining the permission of the concerned authority. Hence there is no question of any evasion. Despite the fact that the assessee challenged the validity of the demand made on him, both the Assistant Collector as well as the Collector ignored that contention; but when the matter was taken up to the Government it treated the demand in question as a demand under Rule 10. The Government confined the demand to clearance affected after December 21, 1962. The demand so modified is in conformity with Rule 10. But the contention of the assessee is that the demand having been made under Rule 9(2) and there being no indication in that demand that it was made under Rule 10, the Revenue cannot now change its position and justify the demand under Rule 10 at any rate by the time the Government amended the demand, the duty claimed became barred even under Rule 10. We are unable to accept this contention as correct. There is no dispute that the officer who made the demand was competent to make demands both under Rule 9(2) as well as under Rule 10. **If the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. This is a well-settled proposition of law. In this connection reference may usefully be made to the decisions of this Court in *P. Balakotaiah* v. *The Union of India,* 1958 SCR 1052 = (AIR 1958 SC 232) and *Afzal Ulah* v. *State of U.P.,* 1964 - 4 SCR 991 = (AIR 1964 SC 264). Further a common form is prescribed for issuing notices both under Rule 9(2) and Rule 10. The incorrect statements in the written demand could not have prejudiced the assessee. From his reply to the demand, it is clear that he knew as to the nature of the demand.** Therefore, I find no substance in the plea of limitation advanced on behalf of the assessee.

(emphasis supplied)

43. The Supreme Court followed **J K Steel** in **COLLECTOR OF CENTRAL EXCISE, CALCUTTA v**ersus **PRADYUMNA STEEL LTD.**[17] and held as follows:

> **3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power.**
>
> Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law.

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17. 1996 (82) E.L.T. 441 (S.C.)

> **4.** The impugned order of the Tribunal dated 21-12-1989 rejecting the Department's application is, therefore, set aside. This results in the Department's application for rectification being allowed, with the consequence that the main order dated 23-6-1987 passed by the Tribunal is also set aside. The Tribunal would now proceed to decide the appeal afresh on merits.
>
> **(emphasis supplied)**

44. The Supreme Court again followed the same principle in **COMMISSIONER OF C. EX. & S.T., ROHTAK** versus **MERINO PANEL PRODUCT LTD.**[18] and held as under:

> **16.** It is clear that the latter question goes to the heart of the matter, rather than the issue of whether the show cause notice becomes legally untenable for failure to expressly mention that the valuation of the goods is to be done under Rule 11 read with Rule 9 of the CEVR. **On the legal proposition advanced by Learned ASG, we readily affirm that citation of an incorrect source of power does not vitiate the exercise of the power itself provided the power vests in the authority to begin with.**
>
> **(emphasis supplied)**

45. The Bombay High Court followed the law laid down by Supreme Court in **J K Steel and Pradyumna Steel** in **COMMR. C. EX. & CUS., AURANGABAD** versus **INDIA CONTAINERS LTD.**[19] and held as under:

> **23.** The learned Counsel for the petitioner cited the judgment in the case of *J.K. Steel Ltd.* v. *Union of India,*1978(2) ELT J 355(SC), wherein it has been held that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. The learned Counsel for the petitioner further cited the judgment in the case of *Collector of Central Excise, Calcutta* v. *Pradyumna Steel Ltd.*, (2003) 9 SCC 234 law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power.
>
> **24.** Thus, mention of wrong Rule in the demand notice would not be an impediment in the way of the petitioner in inflicting penalty under the correct Rule though the said Rule was not

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18. 2023 (383) E.L.T. 129 (S.C.)
19. 2017 (355) E.L.T. 326 (Bom.)

> quoted in the demand/show cause notice. **From the contents of the show cause notice, it is clear that Respondent No. 1 was made aware that it would be liable to pay penalty for obtaining MODVAT credit wrongly. Respondent No. 1 has put forth its defence against the demand for penalty and has got an opportunity to contest that claim. As such, no prejudice can be said to have been caused to Respondent No. 1 because of wrong mention of Rule in the show cause notice under which, penalty was sought to be imposed on Respondent No. 1.**
>
> **(emphasis supplied)**

46. The Calcutta High Court also followed the decision of Supreme Court in **Pradyumna Steel** in **OTA FALLOONS FORWARDERS PVT. LTD.** versus **UNION OF INDIA**[20] and held as follows:

> **24.** In *The Elphinstone Spinning* (supra) the Supreme Court is of the view that, if the authorities have the power to issue a notice, the fact that, the notice refers specifically to a particular rule, which may not be applicable, will not make the notice invalid. Similar view is expressed by the Supreme Court in ***Pradyumna Steel Ltd.***(supra) where it holds that, mere mention of a wrong provision of law when the power exercised is available, even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. In the facts of the present case, the petitioner invited the authorities to invoke the provisions of the Regulations of 2013 at the time of hearing, despite the notice to show cause being issued under the provisions of the Regulations of 2004. It should not be allowed to approbate and reprobate on the applicability of the Regulations. Be that as it may, the authorities did have the power to pass the impugned order in the manner and to the extent as done, under the provisions of Regulations, 2004 as well as under [Regulations] 2013. The impugned order refers to Regulation 11(n) of the Regulations of 2013. The same provision is there in Regulation 13(o) of the Regulations of 2004. It is not substantiated on behalf of the petitioner that, the quoting of Regulation 11(n) of the Regulations of 2013 caused any prejudice to the petitioner. The finding that, the petitioner is guilty of violation of Regulation 11(n) of the Regulations of 2013 has not been substantiated to be perverse. The petitioner does not contend that, the quantum of punishment imposed is disproportionate to the offence committed. On the same facts, the authorities could have awarded the same punishment for violating Regulation 13(o) of the Regulations of 2004. The notification dated June 21, 2013 notifying the Regulations of 2013, in its opening paragraph states that, the Regulations of 2004 stands superseded "except as respect things done or omitted to be done before such

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20. 2018 (362) E.L.T. 947 (Cal.)

> supersession." **The show cause notice was issued under the Regulations of 2004. Notwithstanding the claim of the petitioner before the adjudicating authority that, the proceeding should be governed by the Regulations of 2013, the proceeding is one under the Regulations of 2004 and should be deemed to have been concluded thereunder. In fact, the writing communicating the impugned order specifies that, the impugned order is appealable under Regulations of 2004. The impugned order does not stand vitiated in the manner as contended by the petitioner or otherwise**. The fifth issue is answered accordingly.
>
> **(emphasis supplied)**

47. The decision of the Supreme Court laid down in **Pradyumn Steel** was also followed by several benches of this Tribunal in several other decisions. **Thus, mere mentioning of the old provision [proviso to Section 28(1)] instead of the provision applicable to the relevant period [section 28(4)] in the SCN and mentioning of the correct provision [section 28(4)] in the impugned order does not in any way invalidate the impugned order.**

48. The submission of the learned counsel that the impugned order is invalid on the ground that it confirmed the demand under section 28(4) while the SCN demanded duty under section 28(1), therefore, has no force.

Issue 5: Misconstruction/ misinterpretation of the provision of the notification does not amount to suppression of facts to invoke demand enlarging the period for issuing the SCN under section 28(4) of the Customs Act

49. It is the submission of the learned counsel that if Prestige had misinterpreted or mis-constructed the provision of a notification while self-assessing the Bill of Entry, it does not

warrant invoking extended period of limitation under section 28(4).

50. Learned special counsel, on the other hand, submitted that Prestige had, deliberately and with intention, availed the benefit of Notification No. 12/2012 purportedly for manufacturing televisions using the imported goods but they had not even the facilities to manufacture televisions and Prestige had, undisputedly, not manufactured any goods and simply sold the imported goods to other traders in the Domestic Tariff Area. The following facts would, according to the learned special counsel, establish that Prestige had no intention of manufacturing the goods and only imported the goods into SEZ and cleared them to DTA:

(a) The letter of authorisation was issued to Prestige on 12.1.2016 and 'manufacture' was included in it on 18.2.2016;

(b) on 3.3.2016, Prestige imported goods under two Bills of Entry and immediately cleared them to DTA under one Bill of Entry dated 5.3.2016.

(c) on 28.3.2016, Prestige imported goods under two Bills of Entry and cleared them to DTA on 31.3.2016.

(d) On 19.4.2016, Prestige imported one consignment under a Bill of Entry and cleared it to DTA on 25.4.2016.

(e) On 3.5.2016, Prestige imported one consignment under a Bill of Entry and cleared it to DTA on 10.5.2016

51. These acts of omission and commission are in the nature of misstatement and suppression of facts. Therefore, the Commissioner correctly confirmed the demand under section 28(4). Learned special counsel also submitted that in any case,

the entire period of demand falls within the normal period of limitation although in view of the misstatement and suppression of facts as indicated above, the demand was confirmed under section 28(4).

52. We find that section 28(4) can be invoked in case duty is short paid by reason collusion, wilful misstatement or suppression of facts. According to the learned special counsel for the Revenue, Prestige had indulged in wilful misstatement and suppression of facts while claiming the benefit of the notification which was available subject to the condition that the goods would be used in manufacture after following the procedure prescribed in the Rules.

53. When Prestige had imported the goods into its unit in the SEZ, it claimed the benefit of the Notification No. 12/2012-Cus although it need not have claimed the benefit of any notification because the goods imported into SEZ would have anyway been exempted from Customs Duty by virtue of section 26 of the SEZ Act if they were meant for authorised operations.

54. There were two authorised operations according to Prestige- manufacture and trading. Evidently, the authorised operations in an SEZ are meant for export- either the export of the goods manufactured within the SEZ unit or export of the goods which were imported. Trading in SEZ does not mean importing goods and selling in domestic market. Prestige did

not use the imported goods either to manufacture or to export. Instead, it cleared and sold them in the DTA. Even in the Bills of Entry which it filed to clear the goods to DTA, Prestige claimed the benefit of the Notification No. 12/2012-Cus which was available only for goods to be used in manufacture of final goods following the procedure under ICGR, 1996. Prestige sold the goods to traders in the DTA.

55. We, therefore, find no reason for Prestige to have claimed the benefit available to goods to be used in the manufacture when it neither had any such facility to manufacture and it simply imported the goods and within a few days sold them to another trader in DTA. The wilful misstatement or suppression of facts with an intention to evade can only be inferred from the circumstances and we find it in the facts of this case. We, therefore, find in favour of the Revenue and against Prestige on the question of confirming demand under section 28(4).

Issue 6: Misconstruction/ misinterpretation of the provision of the notification does not amount to suppression of fact and misstatement for imposition of penalty under section 114AA of the Customs Act

56. Learned counsel submitted that even if Prestige had mis-constructed or misinterpreted the provision of the notification, it does not amount to suppression of fact and misstatement for imposition of penalty under section 114AA of the Customs Act.

To examine this submission, it is necessary to examine this section and it reads as follows:

> **114AA. Penalty for use of false and incorrect material.**—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, **any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Ac**t, shall be liable to a penalty not exceeding five times the value of goods.

57. Clearly, the expressions 'suppression of fact' and 'misstatement' do not even find place in this section. Learned counsel appears to have confused this section with the provision under section 28(4) to issue a demand invoking extended period of limitation. Section 114AA is attracted if any person knowingly makes signs or uses, or causes to be made, signed or used, false or incorrect declaration statement or document in the transaction of any business under the Customs Act. **Therefore, the submission that penalty under section 114AA could not have been imposed because there is no suppression of facts is without any force and deserves to be rejected. However, we find that the allegation in the SCN and the finding in the impugned order is that Prestige had wrongly claimed the benefit of an ineligible exemption notification in the Bills of Entry and NOT that there was any factual mis-declaration in the Bills of Entry. Therefore, the penalty under section 114AA deserves to be set aside.**

Issue 7: Penalty under section 114A of the Customs Act cannot be imposed, if the demand has been raised under section 28(1) of the Customs Act

58. Learned counsel submitted that penalty under section 114A could not have been imposed on Prestige because the demand was raised under section 28(1). As we have discussed above while dealing with the question of the SCN, the demand was NOT raised under section 28(1), as claimed by the learned counsel, but under the proviso to section 28(1) which was the old provision for raising a demand if duty was not paid or short paid by reason of collusion, wilful misstatement or suppression of facts. We have noted that the correct provision applicable during the relevant period was 28(4) which is the same as the old provision of "proviso to section 28(1)". We have also found that the well settled legal position is that merely citing a wrong provision will not vitiate the SCN or the order. Therefore, we find no force in this submission of Prestige that penalty under section 114A could not have been imposed because the demand was under section 28(1).

Issue 8: The adjudicating authority failed to deal with the Notification No. 18/2011 which amended earlier Notification No. 45/2005-Cus dated 16.5.2005 since the Notification No. 18/2011 has substituted the words "produced or manufactured in" with the words "cleared from"

59. It is the submission of the learned counsel for the appellants that Prestige was not required to pay Special Additional Duty (SAD) of Customs on the goods which it had

cleared because it was exempted by Notification No. 45/2005 - Cus dated 16.5.2005 as amended by Notification No. 18/2011-Cus dated 1.3.2011.

60. We have considered this submission. The Notification reads as follows:

> **NOTIFICATION NO. 45/2005-CUS., DATED 16-5-2005 AS AMENDED BY NOTIFICATIONS NO. 16/2007-CUS., DATED 21-2-2007; NO. 19/2007-CUS., DATED 27-2-2007; NO. 18/2011-CUS., DATED 1-3-2011**
>
> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts all goods cleared from a special economic zone** and brought to any other place in India in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006 from the **whole of the additional duty of customs leviable thereon under sub-section (5) of section 3** of the Customs Tariff Act, 1975 (51 of 1975):
>
> **Provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax:**
>
> ***Explanation.*** - For the purposes of this notification, "special economic zone" means the special economic zones notified by the Government of India, under Section 4 of the Special Economic Zones Act, 2005 (28 of 2005).

61. Learned counsel is correct in her submission that the SAD was exempted by this Notification on all goods cleared from an SEZ unit. However, this is subject to the condition that if the goods which are sold in the DTA are not exempted from the Sales tax by the State Government. This is a fact to be verified in respect of each of the invoices and the issue needs to be remanded to the Commissioner for examination and re-determination of SAD, if any.

Issue 9: Since Prestige was the exporter and not the importer in the DTA Bills of Entry, no duty can be demanded from it

62. Learned counsel for the appellants also submitted that the importer in the case, as can be seen from the DTA bills of entry, is it's buyers M/s. Maa Ambe International and Zeit Electro-Mech Pvt. Ltd. Prestige, being the seller from SEZ, is the exporter of the goods. Any demand of import duty can only by on its buyers and it cannot be on Prestige which is not the importer but is the exporter. Even on this ground the impugned order cannot be sustained and needs to be set aside. Reliance is placed on the following decisions:

a) **Essar Steel Limited** versus **Union of India**[21]

b) **Union of India** versus **Essar Steel Ltd.**[22]

c) **Advait Steel Rolling Mills Pvt. Ltd.** versus **UOI**[23]

d) **GMR Aerospace Engineering Ltd.** versus **UOI**[24]

e) **UOI** versus **GMR Aerospace Engineering Ltd.**[25]

63. Learned special counsel asserts that the demand of duty was correctly made on Prestige who had paid the duty and cleared the goods.

64. We have considered the submissions on this question.

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21. 2010(249) ELT 3(Guj)
22. 2010(255) ELT A 115 (SC)
23. 2012 (286) ELT 535 (Mad.)
24. 2019(31) GSTL 596(AP)
25. (2023) 6 Centax 155 (SC)

65. The SEZ is treated as if it is outside the Customs territory of India as per section 53 of the SEZ Act although it is physically present within India. It is for this reason, that a Bill of Entry has to be filed to clear the goods from the SEZ unit to the DTA.

66. Section 30 of SEZ Act deals with the domestic clearance of goods by SEZ units and it also empowers the Central Government to make rules for the purpose. Chapter V (Rules 47 to 52) of the SEZ Rules specify the conditions subject to which goods may be removed from SEZ unit to DTA. SEZ Rule 47 permits sale of goods in DTA and SEZ Rule 48 prescribes the procedure for such sales. SEZ Rule 48 requires the DTA buyer to file a Bill of Entry for Home Consumption but also provides that the SEZ unit may file the Bill of Entry on the basis of an authorisation from DTA buyer.

67. In this case, not only were the Bills of Entry were filed by Prestige but even the duty was assessed and paid by it and not by the buyer. The Bills of Entry indicate the names of the buyers as the importers but the sale of goods took place only after the goods were cleared by Prestige and sold to the buyers at the buyers' place. Two questions which arise in this case are:

a) who is responsible to pay the duty and if there is any short payment of duty from who can it be demanded?

b) Is Prestige the exporter or importer or both in the facts of these case?

68. Being a supplier from the SEZ unit, Prestige has the role of the exporter qua the DTA supplies in question. The question is who is the importer from who the short paid duty can be demanded. Section 28 of the Customs Act provides for recovery of duty by issuing a notice to **the person responsible for paying the duty**. The relevant portion of the section reads as follows:

> **Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –**
>
> (1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-
>
> (a) the proper officer shall, within two yearsfrom the relevant date, **serve notice on the person chargeable with the duty or interest** which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;
>
> *****
>
> (4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
>
> (a) collusion; or
> (b) any wilful mis-statement; or
> (c) suppression of facts,
> by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, **serve notice on the person chargeable with duty or interest** which has

> not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

69. As per section 28, the short paid duty can be demanded from the person chargeable with duty or interest. The person who is chargeable with duty or interest is the one who had allegedly short paid the duty and cleared the goods to DTA. In the facts of this case, Prestige paid duty and cleared the goods. The entities to which Prestige had sold the goods after clearing them from customs at their places neither filed the Bills of Entry nor paid the duty. They bought them from Prestige after they were cleared and the sale took place at their premises. Therefore, if Prestige short paid any duty and cleared the goods, such short paid duty can only be demanded from Prestige and not from the entities to which it had, after clearing them, sold the goods.

70. It is also the submission of the learned counsel that the role of Prestige in the transaction is that of an exporter and import duty cannot be charged from it and that the Bills of Entry were only filed by Prestige on behalf of the buyers. This argument appears attractive but on a little analysis of the facts, is without any force. It would have been a different case if Prestige had only filed the Bills of Entry on behalf of its buyers. In this case, Prestige also paid the duty and cleared the goods and continued to be the owner of the goods until they were sold, after clearance to the DTA at the premises of

the buyers. The terms 'import', 'imported goods' and 'importer' were defined during the relevant period, in section 2 of the Customs Act as follows:

> (23) **"import",** with its grammatical variations and cognate expressions, means **bringing into India from a place outside India**;
>
> (25) **"imported goods"** means any goods **brought into India from a place outside India but does not include goods which have been cleared for home consumption**;
>
> (26) **"importer"**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, **includes any owner or any person holding himself out to be the importer**;

71. Since SEZ is treated as outside the customs territory of India, bringing goods into DTA from SEZ area is the import. Once such goods are cleared for consumption in the DTA, they cease to be imported goods. Therefore, there cannot be any assessment of duty under section 17 after they are cleared for consumption in the DTA. However, the duty already assessed under section 17 can be modified and any short paid duty can be demanded under section 28. Logically, it can be demanded from the person who had so short paid the duty. In this case, it is Prestige which allegedly short paid duty and therefore, demand of duty can only be from Prestige. Its buyers indicated as importers in the Bills of Entry neither filed the Bills of Entry nor paid the duty nor cleared the goods for DTA consumption. They were sold the goods at their premises. Until that time, Prestige continued to be the owner of the goods. The term 'importer' includes owner of the goods as per section 2(26) of

the Customs Act. Therefore, Prestige, as the owner of the goods, as the one who filed the Bills of Entry, as the one who paid the duty and cleared the goods to DTA, was also the importer in the case. It was responsible for paying the duty short paid and therefore, demand under section 28 has been correctly made on Prestige.

72. The question which may arise is since Prestige is the exporter as far as the DTA Bills of Entry are concerned, can it also be the importer. The answer is in the affirmative. The same person or entity can be both the exporter and importer in many types of situations. If a person clears his personal unaccompanied baggage through customs, he is both the exporter (since he sent the goods from outside India) and the importer (since he is bringing the goods into India). Similarly, if a company transfers its goods from outside India to India to itself or to its sister unit and clears them for home consumption in India, although there will be no sale, import does take place and such an entity will be both the exporter and the importer. Any confusion about this position will be cleared if it is kept in mind that duties of Customs are levied on the act of importation or the act of exportation and not on the sale itself. It is for this reason, even when there is no sale, the person who brings the goods into India is liable to pay import duty.

73. In the facts of this case, in respect of the DTA Bills of Entry, Prestige was not only the exporter but was also, for the reasons stated before, the importer. The demand of duty short paid by Prestige can only be made from Prestige by issuing a notice under section 28.

74. The case laws relied upon by the learned counsel are clearly distinguishable on facts and the questions involved in them. In the case of **Essar Steel,** the department wanted to charge export duty on the goods supplied to the SEZ area from DTA area. It was undisputed that export duty was chargeable had the goods been exported but they were not actually exported, i.e., taken outside India but were supplied to SEZ area. Therefore, according to Essar Steel, it was not required to pay export duty because the goods had not left India. In the judgment, the Gujarat High Court framed the questions for consideration:

> **39.** Having heard the learned counsels appearing for the parties and having gone through their rival submissions as well as pleadings in light of the statutory provisions and decided case law on the subjects, we are of the view that the moot question for our consideration is as to whether the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is justified under law. Dealing with this question, three important aspects are to be borne in mind :-
>
> (1) Whether export duty can be imposed under the provisions of the Customs Act, 1962 ?
>
> (2) Whether Export Duty can be levied under the provisions of the Special Economic Zones Act, 2005 ?
>
> (3) Whether export duty can be imposed under the Customs Act, 1962 by incorporating the definition of the term "Export" under the SEZ Act, 2005 into the Customs Act, 1962 ?

75. The High Court held that the charging section for export duty under the Customs Act does not cover supplies made to SEZ and that there is no separate charging section under the SEZ Act and therefore, export duty could not be charged on supplies made to SEZ. The relevant portion of this judgment is below:

> **42.** In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developers.

76. In the case of **Advait Steel Rolling Mills,** Madras High Court dealt with a Writ Petition assailing Circular F. No. 6/2/2008-SEZ dated 30.6.2008 issued by the Department of Commerce (SEZ) section according to which supply of steel products by DTA units to SEZ would be permitted only after payment of the export duty. Thus, the question in that case was similar to **Essar Steels** and after referring to **Essar Steel,** the Madras High Court held that there was no charge of export duty on the goods supplied to SEZ and that it was not open to the respondents (Union of India) to levy export duties through circulars.

77. This judgment of Gujarat High Court in **Essar Steel** was upheld by the Supreme Court. Neither the facts of **Essar Steel** nor **Advait Steel Rolling Mills** applies to this appeal because

there is no dispute that import duty was payable on the goods cleared from SEZ units to DTA (because the goods are brought into India) and Prestige had also paid the duty. The dispute is only if the duty was short paid.

78. In the case of **GMR Aerospace**, the petitioners assailed the Order in Original passed by the Commissioner demanding service tax on the services provided to the SEZ units on the ground that section 26(1)(e) of the SEZ Act, no service tax was payable and this provision of the SEZ Act prevails over other laws. The respondent UOI mainly opposed the writ petition on the ground that alternative remedies were available. Allowing the Writ Petition, the High Court of Andhra Pradesh, quashed the order in original. The SLP filed by the Union of India against the judgment of the High Court was dismissed by the Supreme Court.

79. This judgment also does not advance the case of Prestige before us because the question is not about taxability of services rendered within the SEZ unit but is about the short payment of duty of the goods cleared to DTA. There is no dispute that duty was payable if the goods are cleared from SEZ to DTA and Prestige had paid the duty. The dispute is only if the duty was short paid.

Issue 10: Notification no. 12/2012-Cus dated 17.3.2012 (S.No.432) exempts BCD unconditionally and Additional Duty of Customs subject to the condition indicated therein and Prestige had paid the

additional duty of customs as it had not fulfilled the condition.

80. We have considered this submission. The exemption Notification No. 12/2012-Cus, as amended by Notification No. 12/2016-Cus, reads as follows:

12/2012-Cus.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and **in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002** Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said table.

TABLE

S. No.	**Chapter or Heading or Sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Additional duty rate**	**Condition No.**
(1)	(2)	(3)	(4)	(5)	(6)
432.	8529	LCD (Liquid crystal display) and LED (Light Emitting Diode) TV Panels of 20 inches and above	Nil	-	**5**

Condition No.	**Conditions**
5.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

81. The submission of the learned counsel for Prestige is that the Notification would show that it exempted unconditionally the goods listed at S.No.432 of the table from the whole of customs leviable thereon under the said First Schedule, which is also known as Basic Customs Duty or BCD, as is in excess of NIL and it also exempts the goods from additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 subject to the condition specified in column 6, i.e., condition no. 5. Learned counsel does not assert that condition no. 5 was fulfilled. It is her submission that this condition had to be fulfilled only to avail exemption from additional duty of customs and did not have to be fulfilled to claim exemption from basic customs duty. It is also her submission that Prestige had paid the additional duty of customs. It is also her submission that the Commissioner, in paragraph 28 of the impugned order, stated that the condition no. 5 had to be fulfilled only to avail exemption from basic customs duty but he ultimately confirmed the duty including the basic customs duty.

82. On the other hand, according to the Revenue, the conditions for exemption apply to both the basic customs duty and to the additional duty of customs.

83. We have considered the submissions. We also find that the impugned order of the Commissioner remarks in paragraph 28 that the exemption from basic customs duty is not subject

to the condition and it also confirmed demand of basic customs duty. The question is which part of the impugned order is correct and which is the correct legal position. Was the importer required to meet the condition in the exemption Notification to avail benefit of basic customs duty or not?

84. The answer to this question will have far reaching implications beyond this case and hence requires a closer examination. The reason is that exemption Notification No. 12/2012-Cus is a mega notification prescribing the effective rates of duties for all goods in the tariff and it has a long table of goods which exempts basic customs duties and additional duties of customs, of which many are subject to conditions. It was issued in supersession of the previous mega Notification No. 21/2002-Cus which had until then, prescribed the effective rates of duties.

85. Notification No. 21/2002-Cus had, in turn, replaced its predecessor mega Notification No. 17/2001-Cus which had, until then, prescribed the effective rates of duties for all goods. All these three Notifications are worded similarly and have tables with similar columns viz., S. No., Chapter heading or sub-heading, description of goods, standard rate, additional duty rates and condition no. against each entry where the exemption is subject to a condition, the condition number is indicated and the conditions under each S. No. were described at the end.

86. Copies of the Notification submitted in the synopsis before us by the parties are from private publishers. We have examined the three exemption Notifications from the website of the Central Board of Indirect Taxes and Customs. The extracts of the three Notifications relevant to answer this question read as follows:

Notification No. 12/2012-Cus

[TO BE PUBLISHED IN THE GAZETTE OF INDIA,

EXTRAORDINARY, PART II,SECTION 3, SUB-SECTION

(i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification
No.12 /2012 –Customs

New Delhi, dated the 17th March, 2012

G.S.R. €.- In exercise of the powers conferred by sub-section (1) of section 25of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118€ dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)

Notification no. 21/2002-Customs

1st March, 2002
Notification No. 21 / 2002-Customs

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.17/2001-Customs, dated the 1st March, 2001[G.S.R. 116€ dated the 1st March, 2001, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table:

Provided that nothing contained in this notification shall apply to –

a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003 ;

b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005 .

Explanation .- For the purposes of this notification, the rate specified in column (4) or column (5) is ad valorem rate, unless otherwise specified.

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)

Notification no. 17/2001

Notification No. 17/ 2001-Customs
1 March 2001

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of

1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

1. from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

2. from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table.

Provided that nothing contained in this notification shall apply to the goods specified against serial Nos. 238, 239, 240, 241, 242, 243 and 244 of the said Table on or after the 1st day of April, 2002 .

Explanation.- For the purposes of this notification, the rate specified in column (4) or column (5) is ad valorem rate, unless otherwise specified.

S. No.	**Chapter or Heading or Sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Additional duty rate**	**Condition No.**
(1)	(2)	(3)	(4)	(5)	(6)

87. We find that the three Notifications are similarly worded and the Columns in the Table are also same. In all the three Notifications, the first clause (clause 1 of Notification No.

17/2001 and clause 'a' of Notification No. 21/2002 and Notification No. 12/2012) ends with a semi-colon ';' and the second clause (clause 2 of Notification No. 17/2001 and clause 'b' of Notification No. 21/2002 and Notification No. 12/2012) end with a 'comma' and the expression "*subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table*" is in the next line in the Notifications uploaded on the CBIC website. However, while there was a gap of an extra line between the second clause and this expression regarding the condition in Notification No. 21/2002 and Notification No. 12/2012, the extra gap in the form of a line is missing in Notification No. 17/2001. Therefore, one could also confuse the clause pertaining to the fulfilment of the condition to be part of the second clause and infer that it would apply only to the additional duty of customs. This is the root cause of confusion and the argument of the learned counsel that the condition had to be fulfilled only to avail the benefit of exemption from additional duty and the basic customs duty is fully exempt is clearly not the correct interpretation of the Notification. Even if the extra line space is not left between the second clause and the clause pertaining to the condition, the condition clearly is intended to apply to both the basic customs duty and the additional duty of customs. This has been the pattern in all the three exemptions which cover hundreds of types of goods listed in the tables. The

ambiguity in Notification No. 12/2012-Cus created by lack of an extra line space between the second clause and the clause pertaining to the condition must be interpreted in favour of the Revenue. It is held by the Constitution Bench of Supreme Court in **Commissioner of Customs (Import), Mumbai** versus **Dilip Kumar and Company**[26] that in case of any ambiguity in a Notification, it should be interpreted in favour of the Revenue and against the assessee. In this case, the ambiguity is only on account of typographical mistake in not leaving an extra line space in the Notification. Therefore, condition no. 5 at S. No. 432 of the exemption Notification No. 12/2012-Cus, as amended, must be fulfilled to avail the benefit of exemption from basic customs duty also. The remark of the Commissioner in paragraph 28 of the impugned order is not correct and his final order confirming the demand of basic customs duty is correct.

Issue 11: Penalties imposed on Manish and Chirag

88. Learned counsel for appellants assailed the personal penalties under section 114AA imposed on Manish and Chirag on the following grounds:

a) There is no specification in the impugned order as to which documents there was a mis-declaration.

b) Penalty under section 114AA would apply only to mis-declarations in exports and not in imports.

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26. 2018 (361) E.L.T. 577 (S.C.)

89. Learned special counsel for the Revenue supported the penalties imposed on Manish and Chirag.

90. We have considered the submissions advanced by both sides on this issue. Section 114AA reads as follows:

> **"Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

91. Nothing in the section confines its application to only mis-declarations in exports. Evidently, it applies to both imports and exports. In this case, in the Bills of Entry filed by Prestige, a wrong exemption Notification was claimed which it was not entitled to because on the very face of the Notification, it is clear that it is subject to a condition of the imported goods being used for manufacture following a procedure. Neither Prestige nor its buyers had any manufacturing facilities, let alone, manufacturing goods after following the proper procedure. However, no facts were mis-declared in the Bills of Entry. Therefore, penalty under section 114AA on Manish and Chirag cannot be sustained.

92. To sum up:

a) A deeming fiction has been created by Section 53 of the SEZ Act whereby SEZ shall be treated as a territory

outside the Customs territory of India for the purposes of undertaking authorised operations.

b) This presumption is only insofar as it pertains to 'authorised operations', i.e., operations which the developer or entrepreneur is authorised to carry out in the SEZ. If the activities are not related to the authorised operations, then SEZ is not deemed to be 'outside the customs territory of India' as per section 53 of the SEZ Act.

c) Section 53 of the SEZ Act also declares the SEZ to be a Customs port, airport or land customs station.

d) Customs Act applies not only to the whole of India but to also to any offence or contravention thereunder committed outside India by any person. Therefore, even if an offence is committed in the SEZ Area which is deemed to be outside the customs territory of India the provisions of the Customs Act would apply to such offences as well with the rider that if there is also any provision on that offence in the SEZ Act, the provision of SEZ Act prevails over the provision of the Customs Act.

e) Section 51 of SEZ Act does not negate all laws of the land within the SEZ; only to the extent there is any inconsistency between the SEZ Act and other laws, by virtue of section 51, SEZ Act overrides other laws. If the other laws are not inconsistent with SEZ Act, they will continue to be operational.

f) The goods which are cleared to DTA are at par with any other goods which are imported from elsewhere in the world. Simply because the goods were cleared from SEZ and in this case, actually routed through the SEZ (as they were taken into the SEZ unit and in a few days moved to DTA), does not and cannot place the goods on a better footing than the goods which are imported into India from elsewhere.

g) Prestige had not only filed the DTA Bills of Entry but had also paid the duties of Customs and cleared the goods and after clearing sold them to its buyers at destination. Prestige continued to be the owner of the goods until they were sold. Therefore, as the owner of the goods, Prestige was also the importer in addition to being the exporter in respect of the goods cleared through DTA Bills of Entry.

h) Demand of duty under section 28 of the Customs Act must be issued to the person who is required to pay the duty. Since Prestige paid the duty it is also responsible to pay any duty short paid.

i) Neither any provision of SEZ Act nor any provision of Customs Act excludes the jurisdiction of the Commissioner of Customs under section 28 in respect of the goods sold from an SEZ unit in DTA. There is therefore, no force in the submission of the learned counsel that the Commissioner of Customs lacked

jurisdiction to adjudicate the matter and to issue a notice under section 28 of the Customs Act.

j) The Commissioner had, in the impugned order, confirmed demand under section 28(4) of the Customs Act while the SCN was issued under the proviso to section 28(1) of the Customs Act which was the erstwhile provision to invoke extended period of limitation in issuing the SCN. Quoting any wrong provision or erstwhile provision in the SCN does not vitiate the SCN or the consequent proceedings.

k) The exemption at S. No. 432 of Notification No. 12/2012- Cus, as amended, was available both on basic customs duty and additional duty of customs subject to the condition no. 5 which required the goods to be used for manufacture of goods as per ICGR, 2006. Neither Prestige nor its buyers had manufactured any goods and therefore, the appellant wrongly claimed the benefit of the Notification in order to evade duty.

l) The demand of basic customs duty and additional duty of customs under section 28(4) of the Customs Act deserve to be upheld and are upheld.

m) The exemption from Special Additional Duty of Customs (SAD) under Notification No. 45/2005- Cus is available to all goods cleared from the SEZ unit provided they are not exempted from sales tax or Value Added Tax by the State Government. The Commissioner should

examine if there is any evidence of the goods being exempted from sales tax or VAT by the State Government; if there is no evidence, Prestige is entitled to the exemption notification.

n) The amount of duty must be recomputed by the Commissioner after examining the exemptions as above.

o) The penalty imposed on Prestige under section 114A is therefore, upheld. If after recomputing, the duty gets reduced, the penalty under section 114A shall get correspondingly reduced.

p) Penalties imposed under section 114AA on Prestige, Manish and Chirag cannot be sustained and are set aside.

93. Customs Appeal No. 51470 of 2019 filed by Prestige is partly allowed to the extent of setting aside the penalty under section 114AA, partly rejected to the extent of confirmation of demand of basic customs duty and additional duty of customs and partly remanded to determine if there is any evidence of the imported goods being exempted from VAT or Sales Tax by the State Government and accordingly determine if any SAD is required to be paid and also to consequently re-determine the quantum of penalty under section 114A.

94. Customs Appeal no. 51471 of 2019 filed by Manish and Appeal no. 51472 of 2019 filed by Chirag are allowed and the

penalties imposed on them under section 114AA of the Customs Act are set aside with consequential relief to them.

(Order pronounced in open court on 19/02/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK