

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE**

RESERVED ON: 07.02.2024
DELIVERED ON: 11.03.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA**

CUSTA NO. 12 OF 2023

(I.A G.A NO. 01 OF 2023)

COMMISSIONER OF CUSTOMS (PORT), KOLKATA

VERSUS

M/S. SANDEEP KUMAR DIKSHIT

Appearance:-

**Mr. K.K. Maiti, Learned Senior Standing Counsel.
Mr. Tapan Bhanja, Adv.**

.....For the Appellant.

**Mr. Arijit Chakraborty, Sr. Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.**

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal filed by the Commissioner of Customs (Port), Kolkata under Section 130 of the Customs Act, 1962 is directed against the order dated 03.05.2023 passed by the Customs Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal) in Order No. 75314/2023. The appellant which shall be referred as the revenue has raised the following substantial questions of law for consideration:-

(i) Whether the Learned Tribunal has committed the gross error by setting aside the Supplementary Show Cause Notice issued on 18.05.2017 to the respondent holding that prior to insertion of second proviso to Section 124 of the Customs Act, 1962 w.e.f 29.03.2018 the supplementary Show Cause Notice is not legally sustainable?

(ii) Whether the supplementary Show Cause Notice issued on 18.05.2017 to the respondent in connection with Show Cause Notice on 26.08.2016 have any effect to the second proviso to Section 124 of the Customs Act, 1962 which is effective from 29.03.2018?

(iii) Whether the second proviso to Section 124 of the Customs Act, 1962 w.e.f 29.03.2018 is to be considered as retrospective or prospective?

(iv) Whether the supplementary Show Cause Notice dated 18.05.2017 can be treated as separate Show Cause Notice in terms of Section 124 of the Customs Act, 1962 as the same has been issued prior to insertion of second proviso to Section 124 of the Customs Act w.e.f 29.03.2018?

(v) Whether the Learned Tribunal has failed to appreciate the scope and context of the Customs (Supplementary Notice) Regulation, 2019 which was notified in exercise of the powers conferred by

clause (f) of Sub-Section (2) of Section 157 read with second proviso to Section 124 of the Customs Act, 1962?

(vi) Whether the said Regulation of the Customs (Supplementary Notice) Regulation, 2019 can be operative without the aid of Section 157 of the Customs Act wherein to Sub- Section (2)(f) was inbuilt with the wordings "the Circumstances under which, and the manner in which, the supplementary notice may be issued"?

2. We have heard Mr. K.K Maiti, Learned Senior Standing Counsel assisted by Mr. Tapan Bhanja learned advocate appearing for the appellant revenue and Mr. Arijit Chakraborty advocate assisted by Mr. Nilotpal Chaudhury and Mr. Pradip Bera, learned advocates appearing for the respondent.
3. The officers of the Directorate of Revenue Intelligence, Kolkata (DRI) acting on specific intelligence intercepted one consignment of M/s. Srijita Export on 04.03.2016 and on examination recovered 14,790 kilograms of red sanders valued at Rs. 6,65,55,000/-. During the course of investigation, it was found that one Sudhir Jha had handled the export consignment and submitted documents before the customs for the purpose of shipment. These documents were found to be forged and false and it was also found that there were 15 other exports shipments made earlier by the same group or on the strength of fake shipping documents using IEC for some parties namely M/s. Srijita Export, M/s. Akash Ganga Enterprise, M/s. Gopal Associates and M/s. Sayantika Enterprise. On enquiry it was found that another container belonging to the same syndicate which was exported against the IEC of M/s. Sayantika Enterprise had been detained by

Hongkong Customs on 29.12.2015 and red sanders were seized from it. After conclusion of the investigation, show cause notice dated 26.08.2016 was issued to Sudhir Jha and five other persons under Section 124 of the Customs Act, 1962 (the Act) proposing confiscation of the seized goods and imposition of penalty. In the meantime, DRI commenced investigation regarding fraudulent availment of drawback on export of readymade garments to Bangladesh. Search and seizure operations were conducted at various places during which a DVD was recovered which contained several voice clips which were subsequently found to be conversation held between one Jyoti Biswas, a private person with Shri Vikas Kumar, Deputy Commissioner, Shri Sandeep Kumar Dikshit, Inspector (respondent herein) and Shri Kislay, Inspector and others.

4. It is stated during the investigation statement was recorded from Jyoti Biswas wherein he stated that documents prepared in the name of M/s. Srijita Export, M/s. Akash Ganga Enterprise, M/s. Gopal Associates, and M/s. Sayantika Enterprise which were found stored in the DVD were given to him by Shri Vikas Kumar, Deputy Commissioner who used to give him documents and DVD and he used to take print out of the same and give it back to the Deputy Commissioner and the respondent and at times gave the printed copies to the respondent through one Divakar, an employee of M/s. Spak Enterprise Private Limited. Jyoti Biswas further stated that he met the respondent at the residence of the Deputy Commissioner, Vikas Kumar and he worked as per the direction of the respondent and Vikas Kumar. He identified the photographs of the respondent and that of Vikas Kumar. It was further stated that the voice clips are that of the respondent

and the files starting with KLS contained the voice clips of Kislay and the file with mark "NEZ" are the voice clips of the Deputy Commissioner, Vikas Kumar. Further statement was recorded from Sudhir Jha, who stated that he knew the respondent since April 2014 when he was posted at DRI office at Kolkata and met him many times in the ground floor of the office at Dalhousie Square. That the respondent gave him export documents of M/s. Srijita Exporters in respect of four consignments in the office of the DRI, Kolkata and that he returned the documents after shipment. The respondent had paid freight and transport charges for all the 16 consignments. He further stated that he knew the Deputy Commissioner, Vikas Kumar when he met him at the Customs House, License department in connection with the grant of CHA License and Dock Sircar License. Sudhir Jha is said to have confirmed that the seized DVD contained 10 forged copies of ARE-(1) used in relation to smuggling of red sanders in the name of M/s. Sayantika Enterprise, M/s. Gopal Associates and M/s. Kailash Ganga Enterprise. The DVD was sent for forensic examination at CFSL, Chandigarh and was confirmed that the contents of the DVD are genuine, unedited and untampered. The analysis of the voice clips showed deep involvement of the respondent in the fraudulent transactions and illegal exports. Statements of the Deputy Commissioner Vikas Kumar, the respondent and Kislay were recorded who have stated to have given evasive replies to most of the questions put to them. All the three of them refused to give voice samples citing privacy issue.

5. It is further stated that the CDR analysis of the mobile numbers being used by the three officers (including respondent) clearly indicated that they

were in regular touch, not only among themselves but also with other members of the syndicate. Further investigation revealed that the respondent had formed a syndicate with others to carry out fraudulent exports and took active part in smuggling of 14,790 kilograms of red sanders and suspected smuggling of the 225 metric tonnes of red sanders valued at Rs. 100 crores. The respondent had engaged himself in smuggling of prohibited goods, tampering with materialise facts, related to the case, manipulating evidences and forging Central Excise and Customs documents. Investigation further revealed that the Deputy Commissioner, Vikas Kumar handed over the forged ARE-(1) and other documents to the respondent who in turn handed over the same to Sudhir Jha who with the help of the forged documents executed these exports/suspected exports of red sanders in respect of 15 consignments. Further the voice clips found in the seized DVD revealed that the respondent and the other two officers of the DRI had benefited from the sale proceeds of the illegal activities of the syndicate.

6. Further it is stated that the allegations made by Jyoti Biswas about the involvement of the department officers appeared to be corroborated by the voice recording found in the seized DVD and the call details analysis of the mobile number used by them. Further it is stated that the voice of the three officers in the recording matched with the voice of the officers when they appeared before the DRI under summons when statement was recorded from them. On completion of the investigation into role of the officers of the department in the case of smuggling of red sanders, a notice dated 18.05.2017 was issued to Jyoti Biswas and the three departmental officers

including the respondent herein and others proposing to impose penalty under Section 115(i) and Section 114AA of the Act. The said show cause notice was titled as “Supplementary Show Cause Notice” and addendum to the said notice was issued on 22.09.2017 for incorporating certain developments that took place after issuance of the notice dated 18.05.2017 i.e. after receipt of overseas enquiry report from Singapore in respect of seized red sanders effected from one of the export container shipped by the syndicate and upon receipt of the CFSL reports from Chandigarh certifying the authenticity of the contents of the DVD and the voice samples sent for testing as that of the Jyoti Biswas. The department would contend that the findings of the investigation clearly suggested that the three departmental officers which includes the respondent were deeply involved and had masterminded the smuggling of red sanders for pecuniary gain. Separate criminal prosecution has been initiated by the CBI and department proceedings were also initiated against the respondent and the two officers under the provisions of the CCS (CCA) Rules, 1965.

7. The respondent filed the writ petition before this court in WPO No. 290 of 2018 challenging the validity of the notice dated 18.05.2017 and the addendum dated 22.09.2017. By order dated 02.03.2022, the department was directed to consider and dispose of the objections given by the respondent. The Commissioner of Customs (Port), the appellant herein considered the representation of the respondent and by order dated 09.01.2023 held that there was no reason to set aside the notice dated 18.05.2017 titled as “Supplementary Show Cause Notice”. Aggrieved by the same, the respondent preferred appeal before the tribunal. The tribunal by

the impugned order held that the supplementary show cause notice is not legally sustainable as it was issued prior to the insertion of second proviso to Section 124 of the Customs Act, 1962. Challenging the correctness of the said order, the revenue has preferred the present appeal under Section 130 of the Act.

8. The appellant would contend that the learned tribunal did not go into the merits of the case but came to the conclusion that the show cause notice dated 18.05.2017 being supplementary in nature is not legally sustainable. The tribunal failed to consider that before the insertion of the second proviso to Section 124 of the Act there was no mention of any supplementary show cause notice that can be issued wherein Section 124 was silent as to whether the show cause notice once issued can be followed by another supplementary show cause notice. It is further submitted that the second proviso clarifies that the supplementary show cause notice can be issued as per the circumstances and manner prescribed in Customs (Supplementary Notice) Regulations, 2019. The respondent contended that a harmonious reading of Section 124 prior to and subsequent to the amendment would clarify that till the amendment was carried out there was no specific provision to issue supplementary show cause notice and that there is nothing to indicate that the second proviso has been brought in with retrospective date and after addition of second proviso will clarify that only after 29.03.2018, department was empowered to issue supplementary show cause notice in respect of the show cause notice already issued and the department has to follow the guidelines given in the Regulations which was

notified on 18.06.2019. This conclusion of the tribunal is being faulted by the appellant in this appeal.

9. It is further submitted that even prior to the insertion of the second proviso to Section 124 whenever necessary issuance of supplementary show cause notice and addendum has always been in practice. Therefore, the issuance of a supplementary show cause notice could not have been held to be without jurisdiction or illegal. In support of his contention that such practice of issuance of supplementary show cause notice was in vogue and also permitted by the courts, the learned standing counsel referred to the decision in the case of **Commissioner of Customs, Pune Versus Pratima Clearing Agency** ¹. Reliance was also placed on the decision in the case of **Alpa Laboratories Versus Deputy Collector of Customs, ACC, Mumbai** ² which decision was upheld by the Hon'ble Supreme Court as reported in **2005 (129) ELT A 100 (SC)** Reliance was also placed on the decision in the case of **Krishna and Company Versus Union of India** ³. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs, Kolkata Versus Grand Prime Limited** ⁴ to point out that in the said case also, a supplementary show cause notice was issued to the respondent therein. Reliance has been placed on the decision of the tribunal in the case of **Vijay N. Naik Versus Collector of Customs, Kolkata** ⁵ wherein the directions was issued to the authority to decide the matter after opportunity to the appellant therein and the issue regarding the

¹ 2018 (360) ELT 77 (Bom)

² 2004 (177) ELT 93 (Bom)

³ 2003 (159) ELT 32 (Del)

⁴ 2003 (155) ELT 417 (SC)

⁵ 1996 88 ELT 65 (Tribunal)

legality or illegality of the issuance of the supplementary show cause notice was not disputed in the said case.

10. Further it is submitted that the tribunal ought to have appreciated that the respondent is an officer of the department and was found to have played active part in the smuggling of 14,790 kilograms of red sanders and suspected of smuggling of another 225 metric tonnes of red sanders valued at Rs. 100 crores in connivance with others. Further the involvement of the respondent in the smuggling of red sanders came to light only during the course of the investigation of another case by DRI, Kolkata by which the time the show cause notice dated 26.08.2016 had already been issued. Further it is contended that the notice dated 18.05.2017 though titled as “supplementary show cause notice”, it only implies that it is in connection with the original show cause notice dated 26.08.2016. The power and jurisdiction to issue such notice is inherent in the statute and the conclusion drawn by the tribunal is wholly erroneous. Further it is contended that the amendment in the statute and the subsequent notification of the regulation were only explicit expression of the said power already contained in Section 124 of the Act prior to the insertion of the second proviso and it does not tantamount to granting a new power. Further it is contended that the three officers of the department including the respondent were the noticees for the first time in the notice dated 18.05.2017 and therefore the said notice cannot be considered supplementary in respect of the new set of three persons including the respondent. Therefore, the observations of the tribunal regarding the applicability of the 2019 Regulations are not applicable to the charges

levelled against a new set of individuals including the respondent. Therefore, it is contended that mere use of the word “supplementary show cause notice” which was to indicate that it is in connection with the earlier notice dated 28.08.2016 cannot render to notice dated 18.05.2017 or the addendum dated 22.09.2017 as illegal.

11. The learned counsel appearing for the respondent referred to Section 124 of the Act and submitted that in clause (a) of Section 124 power has been given to issue notice in writing with the prior approval of the officer of Customs not below the rank of Assistant Commissioner of Customs informing the person the ground on which it should confiscate the goods for the imposition of penalty and such power vests with any officer of the Customs but the requirement is before issuance of the notice approval of the officer of the customs not below the rank of Assistant Commissioner of Customs has to be obtained whereas in the second proviso, it has been stated that the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed. Section 2(34) was referred to which defines the term “proper officer” and it is submitted that the power given under Section 124(a) and the power given in the second proviso are distinct and different. Apart from that, the supplementary notice can be issued by the proper officer in terms or the power conferred under the second proviso in the manner that may be prescribed which was prescribed in the form of a Regulation in the year 2019. Thus, it is submitted that the combined reading of the words “under such circumstances and in such manner as may be prescribed” occurring in the second proviso can only mean that the second proviso is only prospective in

operation and prior to the insertion of the second proviso which was inserted with effect from 29.03.2018, there was no power vested with the department to issue a supplementary show cause notice. The learned advocates further urged that the Additional Director General of the DRI is not a proper officer, however, such point was not canvassed by the respondent before the tribunal in the appeal filed by the respondent and therefore the respondent is not permitted to urge such an issue before this court for the first time. The learned advocate appearing for the respondent has drawn our attention to the findings of the tribunal and submitted that the tribunal was right in coming to the conclusion that there is nothing to indicate that the second proviso has been brought into effect with the retrospective date. With the above submission, the learned advocate sought to sustain the order passed by the learned tribunal.

12. The materials available on record and the competing assertions of the learned advocates have received our due consideration.
13. In the proceeding paragraphs, the facts of the case have been set out to give a background as to under what circumstances the notice dated 18.05.2017 was issued. The notice dated 26.08.2016 were issued to six noticees the first among them is Sudhir Jha and admittedly the respondent herein was not a noticee in the show cause notice dated 26.08.2016 which was issued under Section 124 of the Act. The notice dated 18.05.2017 is titled as supplementary notice to show cause notice dated 26.08.2016 and the facts of the show cause notice dated 26.08.2016 was annexed to the said notice.

14. Paragraph 1.1 of the notice dated 18.05.2017 states that acting on specific intelligence indicating that some persons are using IEC of other exporters for smuggling of prohibited goods through Kolkata Port, officers of the DRI, Kolkata Zonal Unit, collected relevant information and further investigation revealed that fraudulent exports in the guise of sanitary wear and other articles of the iron and steel were done.
15. Paragraph 1.4 of the notice dated 18.05.2017 states that the notice is supplementary to the show cause notice arising out of further investigation and findings. In para 2, it has been stated that after issuance of the show cause notice dated 26.08.2017 few more facts emerged and the same were investigated and hence the supplementary show cause notice (18.05.2017) is issued and need to be read along with the notice dated 26.08.2016 and to be adjudicated by the adjudicating authority taking into consideration document/evidence discussed in both notices. The allegations in the show cause notice is that the respondent who is the Inspector of Customs formed a syndicate along with others for smuggling red sanders and took active part in the smuggling of seized 14,790 kilograms of red sanders and suspected smuggling of 225 metric tonnes of red sanders that he actively engaged himself in the well planned modus operandi of smuggling of prohibited goods involving tampering with material facts related to the case, manipulating evidences, forging Central Excise and Customs and other related documents. It is further stated that the respondent appears to have created forged documents which was for smuggling of red sanders in respect of 15 consignments. Further it is stated that the respondent arranged finance for transportation and other logistic support for export of red

sanders. The respondent challenged the show cause notice dated 18.05.2017 in WPO No. 290 of 2018 on the ground that it is without jurisdiction and law does not permit the issuance of the supplementary show cause notice. The writ petition was disposed of by order dated 02.03.2022 after taking note of the facts that the respondent had filed their objections to this notice on 14.05.2018 and therefore the court deemed fit to direct the appellant to consider and dispose of the objections by passing a reasoned order after giving an opportunity of hearing to the respondent or his authorised representative. The court made it clear that it has not gone into the merits of the case and the representation given by the respondent and the objection/representation was directed to be considered in accordance with the law. Pursuant to the said direction an opportunity of hearing was afforded to the respondent and the appellant has passed the Order-in-Original dated 09.01.2023 which was impugned before the tribunal. The adjudicating authority after considering the objections raised by the respondent in his order dated 09.01.2023 held that the supplementary show cause notice all though termed as supplementary is actually an independent show cause notice even though it relates to the case of the smuggling which was also a subject matter of the show cause notice dated 26.08.2016. Further the adjudicating authority noted that the respondent has taken part in the adjudication proceedings which was under way, he had appeared for personal hearing cross examination etc. which goes to show that he was aware that there was no infirmity in the issuance of the notice dated 18.05.2017. Further it was held that the respondent has not been able to point out any explicit provision in the Customs Act which

had prohibited the issue of supplementary notice for the purpose of imposition of penalty. Further it was held that the Finance Act, 2018 did not bring a new Sub Section in Section 124 but only a proviso was added to the existing provisions and the amendment has only enabled the enactment of Regulation under the said Section which put the circumstances and the manner for issue of supplementary show cause notice in the framework. That the insertion of the second proviso is clear manifestation of the recognition that the power of issuing the supplementary show cause notice was already there in the provision and if it is not so, the legislature would have inserted a separate Sub Section to Section 124. With these reasoning, the contention raised by the respondent was rejected and it was held that there was no reason to set aside the show cause notice dated 18.05.2017. Section 124 of the Customs Act 1962 is as follows:-

124. Issue of show cause notice before confiscation of goods, etc.- No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter: Provided that the notice

referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

16. The above provisions deals with issues of the show cause notice before confiscation of the goods, etc. The provisions states that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter (XIV) of the Act unless the owner of the goods are such persons- (a) is given a notice in writing with the prior approval of the officer of the Customs not below the rank of Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Clause (b) and (c) would not be relevant for the purpose of this case equally the first proviso is also not relevant. The second proviso which was inserted by the Act 13 of 2018 with effect from 29.03.2018 states that notwithstanding issue of notice under Section 124 the proper officer may issue a supplementary notice under such circumstance and in such manner as may be prescribed. The question would be as to whether prior to insertion of the second proviso with effect from 29.03.2018 can it be said that there was no power conferred on the authority to issue a supplementary show cause notice or an addendum to a show cause notice already issued under Section 124 of the Act.

17. In ***S. Sundaram Pillai Versus V.R. Pattabiraman*** ⁶ the Hon'ble Supreme Court held that a proviso may serve four different purposes (i) qualify or excepting certain provisions from the main enactment; (ii) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable; (iii) it may be so embedded in the Act itself as to become the integral of the enactment and thus acquire the tenor and colour of the substantive enactment itself and; (iv) it may be used merely to Act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.
18. In ***State of Rajasthan Versus Leela Jain*** ⁷ it was held that as a general construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and to carve out something which but for the proviso would have been within the operative part. In ***Shah Bhojraj Oil Mills and Ginning Factory Versus Subbash Chandra Yograaj Sinha*** ⁸ it was held that as a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule.
19. In ***Madras and Southern Mahratta Railway Company Limited Versus Bezwada Municipality*** ⁹ Lord Macmillan observed that the proper function of a proviso is to except and deal with a case which would

⁶ (1985) 1 SCC 591

⁷ AIR 1965 SC 1296

⁸ AIR 1961 Sc 1596

⁹ AIR 1944 (PC) 71

otherwise fall within the general language of the main enactment, its effect is combined to that case. Thus, the law and the subject is very clear to the effect that the provisos are clauses of exception or qualification in the Act, excepting something out of or qualifying something in the enactment which but for the proviso would be within it. It has been held that the correct manner of interpretation of a proviso is that when one finds so in a section but for the proviso the enacting part of the section could have included the subject matter of the proviso. It is clear that prior to the insertion of the second proviso the power to issue the show cause notice, supplementary show cause notice, addendum was implicit and inbuilt in Section 124 of the Act. Therefore, the argument that the second proviso had been inserted with effect from 29.03.2018 and the Regulations came only in the year 2019, the same can be only prospective and therefore the notice dated 18.05.2017 is without jurisdiction is an argument which deserves to be rejected. With this interpretation if the terms and tenor of the second proviso is looked into it has to be held that second proviso is merely declaratory of the previous law and if it is so retrospective operation is generally intended.

20. In ***CIT Versus Gold Coin Health Food Private Limited*** ¹⁰ the Hon'ble Supreme Court referred "Principles of Statutory Interpretation" 11th Edition, 2008 by Justice G.P Singh wherein it was said that if a statute is curative or merely declaratory of the previous law, the retrospective operation is generally intended. A clarificatory amendment will have retrospective effect and therefore if the Principle Act which existed as law when the constitution came into force, the amending Act also will be part of the existing law.

¹⁰ (2008) 9 SCC 622

Having steered clear of the above issue, we also would endeavour to examine as to whether the use of the words “supplementary” in the notice dated 18.05.2017 would in effect be a supplementary show cause notice or a show cause notice issued at the first instance. Reverting back to the facts of the case, the notice dated 18.05.2017 states that certain facts emerged after the issuance of the notice dated 26.08.2016 to which the respondent was not a noticee. It has been further stated that after issuance of the show cause notice dated 26.08.2016 few more facts emerged and the same were investigated and hence the notice dated 18.05.2017 was issued and the same has to be read along with the notice dated 26.08.2016 and will be adjudicated. Thus, the purport and purpose for using the word “supplementary” in the notice dated 18.05.2017 is to connote that it has to be read along and adjudicated along with the notice dated 26.08.2016 and nothing more. Admittedly, in the notice dated 18.05.2017 the first three noticees are the officers of the department and the respondent herein is the second noticee, the first noticee, being the Deputy Commissioner and the third noticee being the Inspector of Customs along with these three noticees who are the officers of the department one more person who has been included as a noticee who was not a noticee in the notice dated 26.08.2016 is Jyoti Biswas. The other noticees namely 5 to 10 are the noticees in the notice dated 26.08.2016. Therefore, it is clear that the show cause notice dated 18.05.2017 is a notice issued based on new facts which emerged pursuant to the investigation conducted after the issuance of the show cause notice dated 26.08.2016 and for all the purposes it shall be treated as show cause notice and the word “supplementary” used therein is only to

indicate that it needs to be adjudicated along with the notice dated 26.08.2016. Therefore, the adjudicating authority was correct in rendering the finding in his order dated 09.01.2023 that the supplementary show cause notice, although termed as the supplementary, is actually an independent show cause notice even though it relates with the case of smuggling which is also a subject matter of the first show cause notice dated 26.08.2016.

21. For all the above reasons, we hold that the tribunal has committed an error in interfering with the order dated 09.01.2023 passed by the adjudicating authority.
22. In the result, the appeal is allowed. The order passed by the tribunal is set aside, the order of the adjudicating authority dated 09.01.2023 stands restored and the substantial questions of law are answered in favour of the appellant revenue.
23. The adjudicating authority is directed to proceed with the adjudication of the show cause notice dated 18.05.2017 and the addendum dated 22.09.2017 after affording reasonable opportunity to the parties and conclude the proceedings as expeditiously as possible. Connected application stands disposed of.

(T.S. SIVAGNANAM, C.J.)

I Agree

(SUPRATIM BHATTACHARYA, J.)