



WEB COPY

C.M.A.No. 3142 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No. 3142 of 2009
and
M.P.No.1 of 2009

The Commissioner of Customs (Imports)
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

.. Appellant

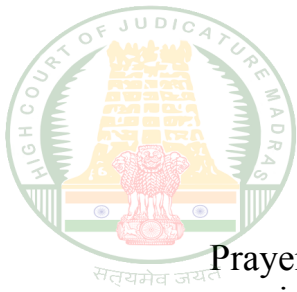
VS

1.Shri. C.K.Geever
New No.22 (Old No.9), Main Road,
Bharathi Nagar,
Nesapakkam, Chennai-600 078.

2.Shri.AM.Amiruddin, Proprietor
M/s.Wintech Inc.,
12/1, Janakiram Nagar,
II Main Road, Perambur,
Chennai-600 011.

3.The Customs, Excise & Service Tax Appellate
Tribunal South Zonal Bench,
Shastri Bhawan Annexe
1st Floor, 26 Haddows Road,
Chennai 600 006.

.. Respondents



C.M.A.No. 3142 of 2009

Prayer : Appeal filed under Section 130 of Customs Act, 1962, to consider the above substantial questions of law raised by the Revenue in the Grounds of Appeal and allow this appeal by setting aside the impugned Final Order No.1135-1136/2008 dated 06/10/2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai received on 20.10.2008 and restore the order in Original No.2722 of 2004 dated 31.08.2004 passed by the Commissioner of Customs, Chennai.

For Appellant : Mr.Sai Srujan Tayi,
Senior Standing Counsel

For Respondents : Mr.M.A.Arshad (for R2)
for Mr.M.Abdul Razack

R1 – Not Ready in Notice

R3 - Tribunal

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This appeal challenging the order of the Customs, Central Excise and Service tax appellate Tribunal ('Tribunal'/'CESTAT') dated 20.10.2008 has been admitted on the following substantial questions of law:-

1. Whether the Additional Director General, Central Excise Intelligence, can exercise his powers as "Officers of Customs"?

2. Whether the notification issued by the Board vide Notification No.31/2000-Cus.(N.T.) as amended by Notification No.69/2000.Cus(N.T) as amended by Notification No.69/2000.Cus(NT) is valid in light of the judgment rendered by the Tribunal in the



WEB COPY



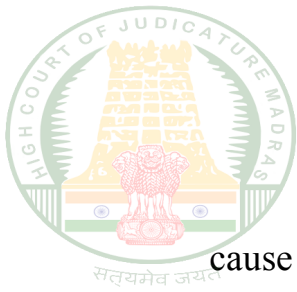
C.M.A.No. 3142 of 2009

instant case with reference to jurisdiction in absence of specification about the area and territory in the above referred Notification and corrigendum?”

2. Notices had been issued to R1 and R2 (collectively as ‘assesseees’) and the cause list reflects that as far as R1 (vacated), is concerned, the notice has been returned. Mr.Sai Srujan Tyai, learned Senior Standing Counsel appears for the Customs Department and Mr.M.A.Arshad, for Mr.M.Abdul Razack, for R2.

3. A show cause notice was issued to R1 and R2 by the Additional Director General of Central Excise Intelligence (‘ADGCEI’), Directorate General of Central Excise Intelligence, Department of Revenue, alleging evasion of customs duty on used photocopier components and sub-assemblies that had been imported by Wintech under two Bills of Entry dated 10.06.2002 and 18.10.2002. The ADGCEI thus proposed to confiscate the goods seized and raised a demand of duty on the goods imported, under the provisions of the Customs Act, 1962.

4. Jurisdiction had been assumed by the ADGCEI invoking powers under Notification No.31/2000-Cus. (NT) dt. 9.5.2000 as amended by Notification No.69/2000-Cus. (NT) dt. 23.11.2000 (‘Notification’). The show cause notices conclude with the stipulation that a separate show



C.M.A.No. 3142 of 2009

cause notice would be issued demanding duty under the Central Excise Act, 1944 in respect of the photocopiers that had been assembled and cleared, after completion of the investigation.

5. R2 had filed its responses to the notice and the proceedings culminated in an Order-in-Original dated 31.08.2004. Inter alia, a preliminary objection had been raised contending that the show cause notice was without jurisdiction as the Notification in terms of which jurisdiction had been assumed did not vest all India territorial jurisdiction on the ADGCEI.

6. After a detailed examination, the preliminary objection had been rejected by the Commissioner of Customs, vide the Order-in-Original and the proposals under the show cause notice had been confirmed. As against the same, appeals had been filed by R1 & R2 and by an order dated 06.10.2008, the appeal had been allowed. The present appeal challenges this order.

7. Mr.Sai Srujan Tayi would assail the conclusion of the Tribunal stating that it was not necessary that the limit of jurisdiction must specifically be stipulated. We had requested the Senior Standing Counsel to produce other Notifications enabling investigation by officers to ascertain whether the territorial jurisdiction of the officer had been



C.M.A.No. 3142 of 2009

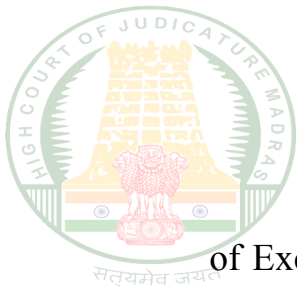
specified therein.

WEB COPY

8. Learned Senior Standing Counsel has filed a compilation containing the Notifications relating to cross empowerment of officers of excise intelligence to perform functions relating to the Customs Act and we find therein that, barring the subject Notification, all the other Notifications did stipulate territorial jurisdiction. According to the learned Standing Counsel, such stipulation is unnecessary as a harmonious reading of the statutory provisions would suffice to vest jurisdiction upon the officer even sans any Notification to this effect.

9. Mr.Arshad, learned counsel appearing for R2, would defend the impugned order emphasizing on the fact that show cause notice dated 08.08.2003 was without jurisdiction, an event that would go to the root of the matter and vitiate all subsequent proceedings. He would take us through the Scheme of the Act specifically Sections 2(34), 4, 5 and 28, pointing out that only an officer with the requisite powers under the Act can issue a show cause notice.

10. The Tribunal has accepted the argument of Respondents 1 and 2, to the effect that, the ADGCEI is not a 'proper officer' as defined under Section 2(34) of the Customs Act and after amendment of Section 4 of the Customs Act, with effect from 11.05.2002, unless the Central Board



C.M.A.No. 3142 of 2009

of Excise and Customs issued a specific notification, the ADGCEI could not act as a customs officer to issue a show cause notice.

11. The subject Notification, Notification No.31/2000-Cus. (NT) dated 09.05.2000 as amended by Notification No.69/2000-Cus. (NT) dated 23.11.2000 is extracted below:

Appointment of Anti Evasion Officers with powers of Customs Officers

In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby appoints the officers of the Directorate General of Central Excise Intelligence specified in column (2) of the Table below as the officers of customs and invests them all the powers exercisable by an officer of customs or the rank specified in the corresponding entry in the column (3) of the said Table, such powers being the powers of an officer of customs conferred under the said Act.

TABLE

Serial Officers of the Directorate General of Rank of the		
No.	of Anti Evasion	Officer of Customs
(1)	(2)	(3)
1.	Director General	Chief Commissioner
2.	<u>Additional Director General</u>	<u>Commissioner</u>
3.	Additional Director	Additional
	Commissioner	
4.	Joint Director	Joint Commissioner
5.	Deputy Director	Deputy Commissioner
6.	Assistant Director	Assistant Commissioner
7.	Senior Intelligence Officer	Superintendent/ Appraiser



WEB COPY



C.M.A.No. 3142 of 2009

8. *Intelligence Officer*

*Inspector/Preventive
Officer/ Examiner*

--

Notification No. 69/2000-Customs (NT)

In exercise of the powers conferred by sub-section (1) of Section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue, No.31/2000-Cus(NT) dated the 9th May, 2000, namely:-

In the said notification, for the words “Directorate General of Anti-Evasion” at the two places where they occur, the words “Directorate General of Central Excise Intelligence” shall be substituted.

(emphasis by underlining supplied)

12. The issue that arises for consideration relates to jurisdiction assumed by officers of Central Excise Intelligence, cross-empowered for specified purposes including the conduct of investigation in Customs cases. A proper officer is defined as follows:

2. Definitions.—In this Act, unless the context otherwise requires,—

.....

(34) -proper officer?, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs.



WEB COPY

13. Section 4 of the Customs Act dealing with the Appointment of officers of customs, reads as follows:-

‘(1) The Board may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorise a Principal Chief Commissioner of Customs or Chief Commissioner of Customs or a Joint or Deputy or Assistant Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.’

14. Section 5, entitled Powers of Officers of Customs, reads as follows:-

‘(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(1-A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.

(1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not



WEB COPY



C.M.A.No. 3142 of 2009

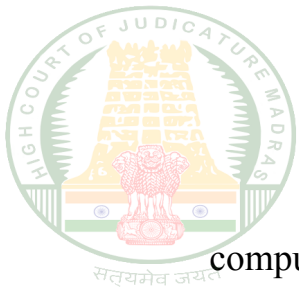
exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified Chapter XV, and section 108 and sub-section (1D) of section 110.

(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to

- (a) territorial jurisdiction;*
- (b) persons or class of persons;*
- (c) goods or class of goods;*
- (d) cases or class of cases;*
- (e) computer assigned random assignment;*
- (f) any other criterion as the Board may, by notification, specify.*

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.'

15. A proper officer is thus one who is assigned the functions of such an officer by the Central Board of Excise and Customs ('Board'/'CBEC'). Section 4 stipulates that the Board, or designated officers, may appoint customs officers. Section 5 touches upon the functions of officers and sub-section (4) states that in assigning functions to the officers, the Board may consider any one of several criteria, including, but not limited to (a) territorial jurisdiction, (b) persons or class of persons, (c) goods or class of goods, (d) cases or class of cases, (e)



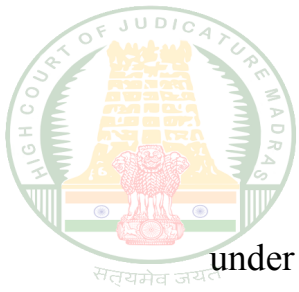
C.M.A.No. 3142 of 2009

computer assigned random assignment or (f) any other criterion as the Board may, by notification, specify.

16. Learned Standing counsel thus takes a cue from this to say that the requirement of territorial jurisdiction is not mandatory as the term used in Section 5(4) is only '*may*'. We disagree. In the present case, it is the ADGCEI, of the Department of Excise Intelligence who has assumed jurisdiction as Commissioner of Customs, to issue the show cause notice in a customs assessment. It is a case of cross-empowerment that is enabled by virtue of Notification 31/2000-CUS(NT) dated 09.05.2000.

17. Prior to amendment w.e.f. 11.5.2002, Section 4(1) authorized the Central Government to appoint such persons as it thought fit to be officers of Customs. Post amendment, the Board has been vested with the power of appointment. Per the subject Notification, an Additional Director-General of Central Excise Intelligence can exercise all powers exercisable under the Act by a Commissioner of Customs. The Notification however does not stipulate territorial jurisdiction for the exercise of such functions. ,

18. Where the Central Government (prior to 11.5.2002) appoints a person under Section 4(1) of the Act to act as an officer of Customs without specifying territorial limits for his functions, it was for the Board



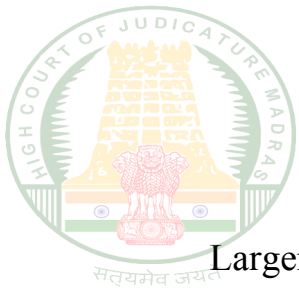
C.M.A.No. 3142 of 2009

under Section 5(1) to do so. We do not agree that such stipulations are optional. It is incumbent upon the Board to specify the territorial limits subject to which such officer of Customs may exercise the powers conferred on him under the Act.

19. The use of the term ‘may’ in section 5(4) does not present such an option to the Board but only qualifies the range of subjects in relation to which the Board may issue conditions. The subjects indicated therein are themselves only indicative/illustrative and not exhaustive.

20. In the present case, the subject Notification under which the ADGCEI derives powers to issue show cause under Section 28(1) of the Customs Act does not specify any territorial jurisdiction and without such specification, he cannot be seen to be a ‘proper officer’ as required under the Customs Act. The argument that the ADGCEI is assumed to have all India jurisdiction in the absence of any restriction on the jurisdiction under the subject Notification does not appeal.

21. Jurisdiction, in our view, cannot be assumed and has to be specifically conferred. As rightly stated by the Tribunal, *‘a ‘proper officer’ of Customs for purposes of Section 28 of the Customs Act should be an officer of Customs with both territorial and pecuniary jurisdiction’*. The Tribunal has also referred to the judgement of the



Larger Bench of the CESTAT in Konia Trading Co. (supra) that was cited by the revenue.

22. In that case too, the notice to show cause had been issued by the Additional Director-General in the Directorate of Revenue Intelligence (DRI) and the question was the aforesaid officer had the power to issue show-cause notice under Section 28(1) of the Customs Act in terms of Notification No.19/90-Cus. (NT) dt. 26.4.1990 issued by the Central Government under Section 4(1) of the Act.

23. However, the Tribunal found that that Notification clearly specified jurisdiction of the ADG, DRI to exercise powers of Collector of Customs, as the 'whole of India' as contracted with Notification No.31/2000 that did not specify any territorial jurisdiction. In the view that we have taken, to the effect that it is mandatory for either the Government or the Board to specify the limits of territorial jurisdiction, the present appeal fails.

24. Learned standing counsel has furnished copies of Notifications issued prior to, and post the subject Notification, as follows:

- (i) Notification No.30/1997-Cus(NT) dated 07/07/1997 (the subject Notification)
- (ii) Notification No.31/2000-Cus.(NT) dated



WEB COPY



C.M.A.No. 3142 of 2009

09.05.2000

(iii) Notification No.69/2000-Customs(NT) dated 23.11.2000

(iv) Notification No.27/2009-Cus.(NT) dated 17.03.2009

(v) Notification No.80/2014-Cus(NT) dated 16.09.2014

(vi) Notification No.17/2002-Customs(NT) dated 07.03.2002

(vii) Notification No.83/2004-Customs (NT) dated 30.06.2004

(viii) Notification No.38/2001- Central Excise (NT) dated 26.06.2001

(ix) Notification No.14/2002-Customs (NT) dated 07.03.2002

(x) Notification No.15/2002-Customs (NT) dated 07.03.2002

(xi) Notification No.35/2002-Customs (NT) dated 13.06.2002 &

(xii) Notification No.44/2022-Customs (NT) dated 06.07.2011.

25. Admittedly all the above Notifications, barring the subject Notification, contain a specific stipulation in relation to territorial jurisdiction, stating that the officers specified therein are vested with all-India jurisdiction. The Tribunal has also undertaken the exercise of comparing the subject Notification with others and finds material differences therein in regard to the stipulation of jurisdiction. The relevant paragraph is as under:

7. We have also perused other Notifications referred to by the counsel. In Notification



WEB COPY



C.M.A.No. 3142 of 2009

No.30/97-Cus. (NT), the Central Government, under Section 4(1) of the Customs Act, appointed certain officers as “Commissioners”, “Deputy Commissioners” and “Assistant Commissioners” of Customs to exercise powers and discharge duties “within their respective jurisdictions”. In respect of those officers who were appointed as “Commissioners of Customs”, it was further specified that their jurisdiction would extend to “the whole of India”. In Notification No.83/2004-Cus. (NT) also, the Government specified territorial jurisdiction for the officers appointed as “Chief Commissioners”, “Commissioners”, “Additional Commissioners” and “Deputy/Asst. Commissioners” of Customs. All these Notifications were issued under Section 4(1) of the Act. Notification No.31/2000-Cus. (NT) as amended by Notification No.69/2000-Cus. (NT), which is central to the present dispute, was also issued by the Central Government under the same provision of law, but this Notification did not specify area of jurisdiction for the “officers of Customs” appointed thereunder. The Board did not invoke Section 5(1) of the Act to specify such jurisdiction either.

8. In the result, we hold that the SCN and the corrigendum thereto were issued without jurisdiction and the same are quashed. Consequently, the follow-up proceedings of the Commissioner of Customs (Seaport-Imports), Chennai are *ab initio* bad in law. Both the appeals are allowed on jurisdictional issue.'

26. We are in agreement with the conclusion of the CESTAT in its order dated 20.10.2008. This Civil Miscellaneous Appeal is hence dismissed in terms of this order and the substantial question answered in



C.M.A.No. 3142 of 2009

favour of R1 and R2, the assesseees. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [N.S., J]
06.08.2025

Index: Yes
Neutral Citation: Yes
ssm

To

The Customs, Excise & Service Tax Appellate
Tribunal South Zonal Bench,
Shastri Bhawan Annexe
1st Floor, 26 Haddows Road,
Chennai 600 006.



WEB COPY



C.M.A.No. 3142 of 2009

DR. ANITA SUMANTH, J.
and
N.SENTHILKUMAR, J.

ssm

C.M.A.No. 3142 of 2009
and
M.P.No.1 of 2009

06.08.2025