



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/TAX APPEAL NO.889 of 2024**

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
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COMMISSIONER OF CUSTOMS, KANDLA
Versus
ALKA PETRO GLOBAL PVT. LTD.

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Appearance:
MR CB GUPTA(1685) for the Appellant(s) No. 1
PARITOSH R GUPTA(7583) for the Opponent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI
Date : 15/04/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. Heard learned Senior Standing Counsel Mr.C.B. Gupta for the appellant and learned advocate Mr.Paritosh Gupta for the respondent.
2. The following substantial questions of law are proposed :-

“10 (i) Whether in the facts and circumstances of the case, the Hon’ble CESTAT is right in holding that the Order-in-Original passed by Commissioner (in-situ) was passed in the capacity of Commissioner, when another officer was already working as Commissioner and head of Customs Commissionerate, Kandla on the date of passing of Order-in-Original by the Commissioner (in-situ) who was adjudicating the case in the capacity of the Additional Commissioner.

(ii) Whether in the facts and circumstances of the case, the Hon’ble CESTAT is right in relying on the Re-test Report of Central Revenue Control Laboratory, New Delhi in case of goods imported by other vessel MT Hanyu Camellia, which is based on Standard EN 15940 : 2019, a European Standard and not an Indian Standard approved by Bureau of Indian Standard, whereas Test Report by Central Excise and Customs Laboratory, Vadodara in case of goods imported by vessel MT Eva Hongkong is available, which is confirming to Bureau of Indian Standard IS:15770:2008 which is as per requirements of Chapter 27 of the Customs Tariff Act, 1975?



(iii) Whether in the facts and circumstances of the case, the Hon'ble CESTAT is right in allowing the appeal of the respondent and dismissing the Customs Miscellaneous Application for Rectification of Mistake?"

3. Insofar as proposed substantial question of law 10 (ii) is concerned, the same is accepted as incorrect substantial question of law by the learned Senior Standing Counsel Mr.C.B. Gupta appearing for the appellant since there was no re-test report of Central Revenues Control Laboratory (CRCL), New Delhi in case of the goods imported by the respondent. Substantial question of law (iii) is formal.

3.1. Learned Senior Standing Counsel Mr. C.B. Gupta has asserted on the substantial question of law no. 10 (i) and it is submitted that the order dated 25.07.2023 was passed by one Shri Ram Het Meena who was acting as Commissioner of Customs (*in-situ*). Hence, the order was supposed to be challenged by the respondent before the Commissioner of Customs (Appeals) Kandla and instead the respondent has challenged the same before the Central, Excise and Service Tax Appellate Tribunal, Ahmedabad (for short "CESTAT"). The CESTAT by decision dated 04.01.2024 allowed the appeals. It is submitted that against the very same order passed by Shri Ram Het Meena, the Customs Authority filed an appeal before the Commissioner of Customs (Appeals) Kandla, which was subsequently rejected by the order dated 24.02.2025 i.e. on the basis of the decision of the CESTAT.

3.2. Learned Senior Standing Counsel Mr. C.B. Gupta has further submitted that when the order dated 25.07.2023 was passed by Shri Ram Het Meena, there was another Commissioner who was already holding his post and hence, he could not have passed the order. It is, therefore, submitted that thereafter the Customs Authority filed Rectification of Mistake Application No.10308 of 2024, which was also rejected by the



order dated 02.04.2024. Thus, it is urged that the substantial questions of law may be answered in favour of the appellant Department.

4. Opposing the aforesaid submissions, learned advocate Mr. Paritosh Gupta appearing for the respondent at the outset has submitted that by the order dated 06.07.2023 passed by Government of India, Ministry of Finance, Department of Revenue, Shri Ram Het Meena was already promoted on the post of Commissioner of Customs and Indirect Taxes and it was directed that he shall assume the charge of the promotional post *in-situ* (as is where is) basis. It is submitted that thus, he had the jurisdiction to pass the Order-in-Original and the reference made in the said order of filing an appeal before the Commissioner of Customs (Appeals) Kandla under Section 128A of the Customs Act, 1962 (for short "the Act") is misconceived as its prescribed format by the Office of the Commissioner, Customs. It is submitted that accordingly the respondent filed an appeal before the CESTAT under the provision of Section 129A of the Act and during the adjudication of the said appeal, no objections were raised by the appellant Department pointing out the aforesaid facts. Thereafter, the Rectification of Mistake Application was also filed which was also rejected by the order dated 02.04.2024. Thus, it is submitted that since the appellant Department has not denied the promotion of Shri Ram Het Meena as Commissioner of Customs and Indirect Taxes, the order passed by him is required to be treated as in such authority and hence appropriate remedy which was available with the respondent was to challenge before the CESTAT.

5. We have heard the learned advocates appearing for the respective parties at length. The Tax Appeal is **admitted** for consideration of the following substantial questions of law :



“10(i) Whether in the facts and circumstances of the case, the Hon’ble CESTAT is right in holding that the Order-in-Original passed by Commissioner (in-situ) was passed in the capacity of Commissioner, when another officer was already working as Commissioner and head of Customs Commissionerate, Kandla on the date of passing of Order-in-Original by the Commissioner (in-situ) who was adjudicating the case in the capacity of the Additional Commissioner.

5.1. Since this is a short issue involved in the present Tax Appeal, we have taken up for final hearing today.

6. The facts which are established from the record are as under :

6.1. By the Office Order No. 103 of 2023 dated 06.07.2023, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, promoted Shri Ram Het Meena to the post of Commissioner of Customs and Indirect Taxes. In paragraph 2 of the said order, it is directed as under :-

“2. The regular posting will be decided in due course with the approval of the Competent Authority. Till then, they shall assume the charge of the promotional post on in-situ (as is where is) basis.”

7. Thus, the regular posting of Shri Ram Het Meena was to be made in due course with the approval of the Competent Authority and till then, it was directed that he shall assume the charge of the promotional post *in-situ* (as is where is) basis. Thus, Shri Meena who has passed the Order-in-Original dated 25.07.2023 was given the charge of promotional post of Commissioner of Customs till regular posting. The respondent department never raised any objection during the adjudicating proceedings, and also when he passed the order dated 25.07.2023, but gained wisdom after the order was passed by the CESTAT, and filed a rectification application. Thus, for all purposes Shri Ram Het Meena was promoted and was given the charge of Commissioner of Customs. Accordingly, in such capacity, he passed the Order-in-Original.

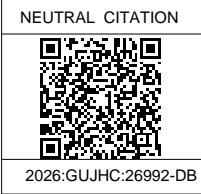


8. At this stage, we may mention and it is not denied by the respondent that under the provision of Section 129A of the Act, more particularly, the provision of Section 129A(1)(a) of the Act, a person who is aggrieved by an order or decision passed by the Principal Commissioner or Commissioner of Customs as an adjudicating authority has to file an appeal before the CESTAT. Thus, the order passed by Shri Ram Het Meena as a Commissioner of Customs, can only be challenged before the CESTAT under the provisions of Section 129A of the Act which the respondent did and accordingly, the CESTAT entertained the appeal.

9. At this juncture, we have noticed that though the appellant Department did not raise any objection and the Order-in-Original was passed on 25.07.2023, and it challenged the order before the Commissioner Appeal. However, a Rectification of Mistake Application No. 10308 of 2024 was filed before the CESTAT seeking rectification of the order dated 02.04.2024 and the same was rejected by the CESTAT by holding thus :-

“4. We have carefully considered the submission made both the side and perused the record. The entire basis of the present application filed by the revenue is that Shri Ram Het Meena who passed the adjudication order is in capacity as Additional Commissioner. However, on perusal of the CBIC order for promotion i.e. Office Order no. 103/2023 dated 06.07.2023, Shri Ram Het Meena had already been promoted as Commissioner from the date of issue of the order and the said order has also clarified that the officers who have been promoted shall assume the charge of promotional post in the present case the promotion of Shri Ram Het Meena is Commissioner. Moreover, in the adjudication order also it is clearly stated designation of Shri Ram Het Meena as Commissioner (in-situ). Therefore, there is absolutely no doubt that the order was passed by Shri Ram Het Meena in the capacity of Commissioner. Therefore, appeal against any order passed by the Commissioner shall lie before this Tribunal.”

10. We do not find any infirmity in the aforesaid observations made by the CESTAT in the Rectification of Mistake Application. Shri Ram Het Meena had the authority and jurisdiction to pass the Order-in-Original as an Commissioner of Customs and the only remedy available against the



said order was to challenge the same by filing an appeal before the CESTAT under the provision of Section 129A of the Act. Further, mere mentioning of provision of Section 128A of the Act in the title of the Order-in-Original dated 25.07.2023 suggesting to file an appeal against the said order before the Commissioner of Customs (Appeals) Kandla would not *ipso facto* mean that such appeal has to be filed before the Commissioner of Customs (Appeals) only, by ignoring the provision of Section 129A of the Act and the order passed by the Commissioner. Thus, we are of the opinion that the respondent had precisely challenged the Order in original passed by the Commissioner before the CESTAT by resorting to provision of Section 129A of the Act by ignoring the caption of the Order-in-Original dated 25.07.2023 referring to the provision of Section 128A of the Act, to file an appeal against the Order-in-Original before the Commissioner of Customs (Appeals). Hence, the substantial question of law is answered in favour of the respondent and against the appellant - department.

The Tax Appeal is accordingly ***dismissed***.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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