CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

CUSTOMS APPEAL No.85750 OF 2022

[Arising out of Order-in-Appeal No. MUM-CUS-KV-IMP-128/2021-22-NCH dated 27.12.2021 passed by the Commissioner of Customs (Appeals), 2nd Floor, New Customs Building, Ballard Estate, Mumbai-400001]

M/s. HINDUSTAN COPPER LTD
Khetri Copper Complex, **Appellant**
Khetrinagar-333504, Distt.Jhunjhunu (Raj)

Vs.

COMMISSIONER OF CUSTOMS
2nd Floor, New Customs Building, Ballard Estate, **Respondent**
Mumbai-400001

Appearance:
Present for the Appellant: Shri Ankit Totuka, Advocate
Present for the Respondent:Shri L B D'Costa (AR)

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO.85635/2026

Date of Hearing: 26.03.2026

Date of Decision:07.05.2026

PER: AJAY SHARMA

This appeal arises from the impugned Order-in-Appeal dated 27.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I, whereby the learned Commissioner (Appeals) confirmed the Order-in-Original dated 22.3.2018 passed by the Adjudicating Authority and, consequently, dismissed the appeal filed by the Appellant.

2. The Appellant has assailed the impugned order mainly on the grounds of non-issuance of a show cause notice as mandated under Section 28 of the Customs Act, 1962 and inordinate delay in adjudication spanning nearly twenty-three (23) years.

3. The relevant facts, briefly stated, are as follows. On 12.09.1990, the Appellant, M/s. Hindustan Copper Ltd., imported a consignment of tyres, tubes and flaps. The goods were duly assessed and the Appellant paid all applicable duties, including Countervailing Duty (CVD) and Special Additional Duty (SAD), whereupon the goods were cleared from customs. On 26.04.1991, upon a review of the assessment, the Appellant formed the opinion that excess CVD had been charged and accordingly filed a refund claim. The said claim was admitted by the Assistant Commissioner (Refund), and the goods were re-assessed. Upon re-assessment, the total duty leviable was determined at Rs.11,18,987.30 as against the original levy of Rs.19,61,610/-. Consequent upon this re-assessment, a refund of Rs.8,42,613.70 was sanctioned and paid to the Appellant on 30.03.1994.

4. Subsequently, the Central Revenue Audit (CRA), upon examining the re-assessment, raised an objection dated 17.11.1994, contending that the CVD levied at Rs.1,750/- per tyre had been incorrectly reduced, inasmuch as the concessional rate prescribed under Notification No.41/1989-CE was applicable only to tyres of motor vehicles and not to tyres of vehicles designed for use off-the-road. Acting on this audit objection, the department issued a demand notice dated 18.12.1995, calling upon the Appellant to deposit the alleged excess refund of Rs.8,00,485/-.

5. The matter thereafter lay dormant for nearly two decades. The first notice of personal hearing was issued to the Appellant only on 07.03.2014, approximately nineteen years after the demand notice. During the course of the hearing, the Appellant, in its reply dated

10.03.2016, candidly informed the department that, given the antiquity of the matter, most of the employees who had handled the relevant import transaction had since retired and the existing staff of the purchase department had no knowledge of or familiarity with the proceedings. The Adjudicating Authority passed the Order-in-Original dated 22.03.2018, confirming the recovery of Rs.8,42,613/- together with applicable interest. The Commissioner of Customs (Appeals), by the impugned order dated 27.12.2021, mechanically endorsed the adjudication order and dismissed the appeal.

6. Having regard to the submissions advanced by the learned Counsel for the Appellant and the learned Authorised Representative for the Revenue, and upon a careful examination of the records, the following issues arise for determination in this appeal: -

(i) *Whether the initiation of recovery proceedings without issuing a show cause notice in the form and manner mandated by Section 28 of the Customs Act, 1962 is legally sustainable? and*

(ii) *Whether the adjudication conducted after an inordinate delay of approximately twenty-three years can be sustained in law?*

7. At the threshold, a fundamental infirmity in the orders under challenge demands attention. The demand notice dated 18.12.1995, which constituted the foundation and the jurisdictional substratum of the entire recovery proceeding, was issued for an amount of Rs.8,00,485/-. The Adjudicating Authority, however, confirmed a demand of Rs.8,42,613/-, an amount that was neither the subject matter of the demand notice nor any amended or supplementary notice is stated to be issued thereafter. The Commissioner (Appeals), in turn, confirmed this inflated demand, without pausing to notice or address this discrepancy.

8. It is a fundamental principle of law that an authority exercising quasi-judicial powers is circumscribed by the four corners of the notice that initiates the proceeding. The demand notice is not merely a procedural preamble, it defines the scope of the proceeding and delimits the jurisdiction of the adjudicating authority. Any confirmation of demand beyond the amount specified in the demand notice is, ex facie, an exercise of jurisdiction in excess of what was conferred. Thus the orders of both the Adjudicating Authority and the Commissioner (Appeals) are, on this ground alone, liable to be set aside.

9. Now I will take up the issues raised herein by the learned counsel:

Issue (i): Non-issuance of a show cause notice

The learned Counsel for the Appellant has urged, with considerable force, that no show cause notice was ever issued to the Appellant in compliance with Section 28 of Customs Act, 1962 which clearly envisage that issue of show cause notice is mandatory to the person to whom erroneous refund has been made. He submits that the department proceeded to adjudication solely on the basis of the demand notice dated 18.12.1995. The learned Authorised Representative for the Revenue has, in response, contended that the demand notice itself served the substantive purpose of a show cause notice by apprising the Appellant of its liability, and that there was, therefore, substantial compliance with the statutory requirement.

10. This contention of the Revenue cannot be accepted. Section 28 of the Customs Act, 1962 unequivocally mandates that before any demand for short-levy, non-levy, or erroneous refund is

fastened upon a person, a show cause notice must be issued calling upon that person to show cause as to why he should not pay the amount specified in the notice. The language of the provision is clear, mandatory and admits of no equivocation. The show cause notice serves a dual and indispensable purpose, it informs the noticee of the precise case that the Revenue seeks to establish against him, and it affords him an opportunity to be heard in his defence before any adverse order is passed. Both these elements are constitutive of the guarantee of *audi alteram partem*, which is cornerstone of principle of natural justice and a facet of the constitutional right to a fair procedure.

11. A bare demand notice that calls upon a person to deposit a sum of money, without expressly inviting the noticee to show cause against the proposed recovery, cannot, by any interpretive stretch, be treated as a show cause notice. The distinction between a demand and a show cause notice is not one of form alone, it is a substantive distinction rooted in the rights of the noticee. The show cause notice is the instrument by which the adjudicatory authority's jurisdiction is properly invoked. It defines the boundaries of the proceeding and ensures that the noticee is not taken by surprise. In its absence, the entire proceeding is vitiated at the root.

12. The Hon'ble Supreme Court, in *Metal Forgings v. Union of India; reported in 2002 (146) ELT 241 (SC)*, has laid down that the issuance of a show cause notice in the prescribed form and manner is a mandatory requirement of law. The notice must call upon the noticee to show cause if he has any objection to the proposed demand. No such invitation was extended to the Appellant in the

present case. The demand notice dated 18.12.1995, as claimed to be issued u/s. 28 ibid, was a unilateral communication directing deposit of money. It was not a notice that called upon the Appellant to show cause why the demand should not be confirmed. The adjudication that followed was therefore without a valid show cause notice and is unsustainable in law.

Issue (ii): Inordinate delay in adjudication

13. The demand notice was issued on 18.12.1995 and the first notice of personal hearing was of 07.03.2014, nearly nineteen years later. The Order-in-Original was eventually passed on 22.03.2018, approximately twenty-three years after the demand notice. This delay is not merely inordinate; it is, by any standard, egregious. The department appears to have been roused from its somnolence only by the insistence of the audit machinery, and even thereafter, the matter drifted for decades without any discernible urgency.

14. The consequences of such delay are severe and tangible. The Appellant's letter dated 10.03.2016 poignantly illustrates the prejudice suffered. It was disclosed therein that most of the employees who had handled the relevant import transaction had since retired, and the existing staff was entirely unaware of the proceedings. Documents and records pertaining to an import transaction of the year 1990 were, predictably, no longer available. The Appellant was thus placed in the untenable position of having to defend itself against a demand in respect of which it could neither examine the relevant witnesses nor place before the authority the documentary evidence that might have been available had the matter been adjudicated within a reasonable time.

15. The right of a party to a fair hearing necessarily encompasses the right to have the proceeding concluded within a reasonable time, such that the party retains the ability to effectively exercise its right of defence. Adjudication after a delay of two decades irreparably erodes this right. No party can be reasonably expected to preserve business records, maintain institutional memory of routine import transactions, or produce witnesses after the passage of nearly a quarter century.

16. The Hon'ble Bombay High Court has, in an analogous context, recognised this principle unequivocally. In *Parle International Ltd. v. Union of India; 2021 (375) ELT 633 (Bom.)*, it has been held by the Hon’ble High Court that adjudication after a delay of more than a decade defeats the very purpose of issuing a show cause notice, rendering the proceeding fundamentally unjust. The ratio of that decision applies with even greater force to the facts of the present case, where the delay stretches to more than two decades.

17. The department's inaction for approximately twenty-three years is not merely a procedural lapse, it amounts to a constructive abandonment of the proceeding. Having allowed the matter to rest undisturbed for so long, the Revenue cannot be permitted to revive and complete a proceeding that causes grave and irreparable prejudice to the Appellant, whose ability to meet the demand has been fundamentally compromised by the passage of time. The ground of delayed adjudication, standing independently, is sufficient to invalidate the order of the Adjudicating Authority and, consequently, the impugned Order.

18. For the reasons set out above, the impugned Order is set aside. The appeal filed by Appellant is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 07.05.2026)

(Ajay Sharma)
Member (Judicial)

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