Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

Customs Appeal No. 10080 of 2024 – DB

(Arising out of Order in Appeal MUN-CUSTM-000-APP-34-23-24 dated 06/07/2023 passed by Commissioner of Customs (Appeals), Ahmedabad)

Famous Steel **........Appellant**
Shop No. 35, 5th Kumbharwada,
2nd Pathan Street, Mumbai-400 004.

VERSUS

Commissioner of CUSTOMS - Mundra Customs **......Respondent**
Office of the Pr. Commissioner of Customs,
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone,
Mundra, KACHCHH, 370421, GUJARAT

APPEARANCE:

Shri Vikas Mehta, Consultant appeared for the appellant
Shri R Kumar, Superintendent (AR) appeared for the department

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10752/2026

DATE OF HEARING: 26.03.2026
DATE OF DECISION:23.09.2026

SATENDRA VIKRAM SINGH

M/s Famous Steel, Mumbai (Appellant) have filed two Bills of Entry bearing No. 9855513 dated 30.01.2019 and 3407185 dated 27.05.2019 for import of "cold rolled flat products of Stainless Steel of size ranging from 600mm to 1250 mm" from China classifiable under CTH 7219. After self assessment, the goods were cleared for home consumption. Subsequently, it was observed that the goods of CTH 7219 originating in and exported from China also attracted Anti Dumping Duty @ 57.39% as per Notification No. 61/2005-Cus (ADD) dated 11.12.2015 which was not paid on these goods by the appellant. Therefore, Revenue issued them a show cause notice dated 06.01.2021 proposing recovery of Anti Dumping Duty of Rs. 20,95,712/- and IGST of Rs.3,77,228/- under Section 28(1) of the Customs Act, 1962 alongwith interest at the appropriate rate and penalty under Section 117 of the Customs Act, 1962.

1.1 The above show cause notice was decided by the Additional Commissioner vide Order dated 28.05.2021, wherein he confirmed the above demand of Anti Dumping Duty of Rs.20,95,712/- and IGST of Rs.3,77,228/- under Section 28(1) of the Customs Act, 1962 read with Section 5 of the IGST Act, 2017 along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the CGST Act, 2017. He also imposed a penalty of Rs. 4Lakh on the importer under Section 117 of the Customs Act, 1962.

1.2 Aggrieved with the above order, appellant filed an appeal before the Commissioner of Customs (Appeals) mentioning that, the goods cannot be reassessed without any appellate order as held by Hon'ble Supreme Court in the case of ITC Ltd. reported at 2019-TIOL-418-SC-CUS-LB. Reliance was also placed on the decision in the case of Axiom Cordages Ltd. Vs Commissioner of Customs Nhava Sheva-II reported at 2020 (9) TMI CESTAT-Mumbai where it is held that reassessment of goods cannot be done without any appellate order against the assessment order. After considering various submissions made by the appellant, the Commissioner (Appeals) upheld the order of the lower authority and rejected the appeal filed by the appellant. Hence, the present appeal before this Tribunal.

2. The appellant took following grounds in their appeal and prayed for setting aside the impugned order by allowing their appeal:-

a) The impugned order tantamounts to reopening assessment orders that were passed at the material time for not levying the Anti Dumping Duty in terms of Notification No. 61/2015-Cus ADD dated 11.12.2015. It has been held by Hon'ble Supreme Court in the case of ITC Ltd. that self assessment is also an assessment order and any aggrieved person, be it department or assessee, is required to file appeal against it. In the instant case, without challenging the assessment orders before appropriate authority, the revenue is seeking re-assessment of goods by issue of demand / show cause notice to them.

b) In the case of Axiom Cordages Ltd., it has been held by the Tribunal that unless and until the order passed under Section 51 of the Act is dealt with in the manner prescribed by the Appellate Authorities, such order stands and the correctness or otherwise cannot be questioned subsequently by issuance of a show cause notice. Similar finding was given by the Hon'ble High Court of Tripura in the case of Tripura Ispat vs UOI 2021 (1) TMI 753.

c) The demand of IGST under Section 28 of the Customs Act, 1962 is not maintainable as section 28(1) and 28AA of the Customs Act, 1962 can be invoked to issue notice on the person chargeable with duty of customs and interest respectively. As per Section 2(15) of the Customs Act, 1962, "duty" means a duty of Customs leviable under Customs Act 1962. IGST is levied under Section 5(1) of the IGST Act and only the procedure for collection has been provided under Section 3 of the Customs Tariff Act, 1975. Hence, IGST cannot be treated as duty of Customs as defined under Section 2(15) of the Customs Act, 1962. Consequently, invocation of Section 28(1) and 28AA of the Customs Act, 1962 for demanding IGST and interest is without authority of law.

d) They are not liable to any penalty under Section 117 of the Customs Act, 1962 for which they rely on the decision of Hon'ble Bombay High Court in the case of Dimension Data India Pvt. Ltd. vs Commissioner of Customs, 2021 (376) ELT 192 (Bom.).

3. During hearing, learned counsel emphasized on the decision of Hon'ble Supreme Court in the case of ITC Limited (cited supra) and argued that since Revenue did not file appeal against self assessment order made by the appellant which order therefore attained finality. Hence, Revenue has no ground for demanding Anti Dumping Duty and IGST from the appellant. He also submitted that in ITC Case, Hon'ble Apex Court considered this issue in detail and after considering their decision in the case of Flock (India) Pvt. Ltd. [2000 (120) ELT 285(SC)] and Priya Blue Industries Ltd. case [2004 (172)

ELT 145 (SC)], it held that "applications for refund were not maintainable where the underlying assessment (including self assessment) had not been modified by the appropriate statutory proceedings; self assessment is an assessment order and appealable, and Section 27 cannot be used to re-adjudicate or reopen unmodified assessment orders".

3.1 Learned counsel also emphasized above point by relying on the order of CESTAT Mumbai in the case of Axiom Cordages Limited (cited supra) and prayed for considering their submissions and allowing their appeal.

4. Opposing the prayer, Learned AR justified demand of Anti Dumping Duty and IGST along with interest from the appellant. He submits that Hon'ble Supreme Court in the case of UOI vs Jain Shudh Vanaspati Limited [1996 (86) ELT 460 (SC)] has clearly held that the department can issue show cause notice for duty demand under Section 28 of the Customs Act subsequent to clearance of goods under Section 47 and there is no condition of prior revision of assessment. Similar finding was given by this Tribunal in the case of Asia Motor Works reported at 2020 (370) ELT 729 (Tri. Bom.) which by applying the Apex Court decision in Jain Shudh Vanaspati Ltd. case rejected the contention of the appellant that non-challenge to the assessment order will invalidate the show cause notice issued for recovery of duty under Section 28. Learned AR also relied on the decision of Mumbai Tribunal in the case of Korpan Ltd. Vs Commissioner of Customs, Nhava Sheva 2019 (370) ELT 1014 which has held that duties levied under Customs Tariff Act, including IGST under Section 3(7) are the duties of Customs for the purposes of Customs Act. Thus, short paid IGST is also recoverable under Section 28 of the Customs Act alongwith interest under Section 28AA read with Section 50 of the CGST Act, 2017.

4.1 On the issue of penalty, Learned AR relied on the decision of Hon'ble High Court of Karnataka in the case of Rajesh Exports Limited reported at 2018 (362) ELT 1945 wherein Hon'ble Court was considering appeal filed against an order of the Adjudicating Authority imposing penalty of Rs. 1 Lakh while permitting re-export of goods. Hon'ble High Court upheld the discretionary power of the Adjudicating Authority to impose penalty under Section 117 and held that no question of law arises.

5. We have heard both sides. We find that Notification No. 61/2015-Cus (ADD) dated 11.12.2015 provides for imposition of Anti Dumping Duty on Cold Rolled Flat Products of Stainless Steel. The relevant entry at Sr. No. 1 of the table in the said notification, is reproduced below:

> *"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, the specification of which is specified in column (4), falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries/territories as specified in the corresponding entry in column (5), exported from the countries/territories as specified in the corresponding entry in column (6), produced by the producers as specified in the corresponding entry in column (7), exported by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the said Table, namely :-*

TABLE

Sl. No.	***Tariff heading***	***Description of goods***	***Specification***	***Countries /Territories of origin***	***Countries /Territories of export***	***Producer***	***Exporter***	***% of landed value***
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*	*(9)*
1	*7219*	*Cold-rolled Flat products of stainless steel*	*All Grades, All Series except the exclusions as per Note below*	*People's Republic of China*	*Any*	*Any*	*Any*	*57.39 %*

5.1 As per facts, appellant had imported stainless steel sheets falling under CTH 7219 2419 from China in the month of Jan and May-2019 and therefore, in terms of above Notification, imported goods were leviable to Anti-dumping duty at the prescribed rate but the same was not paid at the time of self-assessment by the appellant. Revenue has demanded Anti-dumping duty on imported goods and also IGST on the Anti-dumping duty at the appropriate rate, from the appellant by issue of show cause notice, which action has been challenged by the appellant on the ground that self-assessment has not been challenged by the Revenue and Anti-dumping duty is not a duty of customs.

5.2 Regarding first point i.e. demand of Anti-Dumping Duty, learned Counsel, Shri Vikas Mehta argued that the imported goods were cleared under self-assessment which has neither been challenged by the department by way of filing an appeal nor is there any other order setting aside the assessment and therefore, demand of Anti-Dumping Duty and IGST are not tenable in view of decision of Hon'ble Apex Court in ITC case (cited supra). He refers to para 47 of the decision where it has been held as under:-

> ***"47.*** *When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

We find that in ITC case, issue for consideration before Hon'ble Court was claim of refund of duty filed by ITC who subsequent to assessment of duty, found that they were eligible to benefit of Notification 6/2000-CE dated 01.03.2000 granting complete exemption from duty upto certain specified quantity of finished goods manufactured by using unconventional raw materials. As per them, duty was paid but exemption was available to them under a Notification, hence, they filed the refund claim. In these facts, Hon'ble Supreme Court held that unless assessment is challenged by way of filing an appeal and there is an appellate order to that effect, refund will not arise. Para 44 of the said decision amplifies this proposition in following words:

> ***"44.*** *The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application,*

> *re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra)."*

5.3 The present matter involves non payment of Anti-dumping duty and IGST thereon, during self- assessment of goods and therefore, the issue in hand is related to duty demand governed by the provisions of Section 28 of the Customs Act, 1962 and not by refund provisions. During subsequent scrutiny of documents, department found that Anti-dumping duty and IGST thereon, was not paid on the goods during self-assessment, and therefore, it exercised it's right under Section 28 of the Customs Act, 1962 by issuing show cause notice. The provisions of Section 28 of the Customs Act dealing with recovery of duties of customs not levied or not paid……. are entirely different than the refund provisions under Section 27 arising out of any assessment or reassessment order. We also note that similar issue came up for decision before Hon'ble Supreme Court in the case of Jain Shudh Vanaspati Ltd. 1996 (86) ELT 460 (SC) which in para 6 of said decision, held as under:-

> ***"6.*** *The case of the appellants in the show cause notices is that the stainless steel containers in which the said oil was imported were banned, that the stainless steel containers were deliberately camouflaged by painting them to resemble mild steel containers, and that this was done with a view to enabling their clearance. A clearance order under Section 47 obtained by fraudulent means such as this (if it, in fact, be so) cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124. Fraud, if established, unravels all. An order under Section 47 obtained by the employment of fraudulent methods does not have to be set aside by the exercise of revisional powers under Section 130 before the ill-effects of the fraud can be set right by initiation of the process of confiscation of the fraudulently cleared goods under Section 124."*

5.4 Similar issue also came up for consideration before CESTAT Mumbai in the case of Asia Motors Works where customs duty was demanded by issuing demand cum show cause notice without challenging the assessment order. The Tribunal in their order reported at 2020 (371) ELT 729 (T) held as under:

> ***"6.*** *It has been argued by the Ld. Counsel for AMW that since the assessment has not been challenged, demand under Section 28 cannot be raised. In this regard Ld. AR had relied on decision of Ld. Apex Court in case of Jain Shudh Vanaspati Ltd. (supra) wherein it has been held that the demand can be raised under Section 28 even if challenging assessment. Consequently this argument of Ld. Counsel for AMW is rejected."*

In view of above judicial pronouncements, we are of the view that there is no bar in issuance of show cause notice by the department under Section 28 of the Customs Act for demanding differential customs duty without challenging self-assessment of goods.

5.5 Regarding the second issue, we find that Section 3(7) of the Customs Tariff Act, 1975 deals with charging of Integrated Tax on imported goods whereas, Section 3(8) deals with calculation of IGST. For easy reference, these provisions are reproduced as under:-

> *"(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) "[or sub-section (8A), as the case may be.]*
>
> *(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act. 1962, be the aggregate of-*
>
> > *(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and*
> >
> > *(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9)."*

From above, it is clear that IGST is to be calculated on sum total of value of the goods plus duties of customs chargeable on that Article under Section 12 of the Customs Act, 1962.

5.6 Section 12 of the Customs Act, 1962 provides as under:-

> *"12. Dutiable goods.—*
>
> > *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.*

[(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]"

5.7 Sub Section 1 of Section 9A of the Customs Tariff Act, 1975 which deals with Anti-dumping duty, is reproduced as under:-

"(1) Where any article is exported by an exporter or producers from any country or territory (hereafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article."

5.8 From combined reading of the above provisions, it is clear that Anti-dumping duty levied under Section 9A of the Customs Tariff Act, 1975 is a duty of customs. Therefore, as per Section 3(7) read with Section 9A of the Customs Tariff Act, 1975 and further read with Section 12 of the Customs Act, 1962, IGST is leviable on Anti-dumping duty which was not paid in this case by the appellant at the time of self-assessment. We rely on the decision of Mumbai Tribunal in the case of Korpan Ltd. Vs Commissioner of Customs, Nhava Sheva (cited supra) which at para 5.7 held as under:-

"5.7 *Section 2(15) of the Customs Act, 1962 reads ""duty" means a duty of Customs leviable under this Act;" and Section 12 of the Act reads "(1) Except as otherwise provided in this Act, or any other law for the, time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India." Thus plain reading of Section 2(15) and Section 12 make it evident that the duties of Customs include all the duties that are levied under the Customs Tariff Act, 1975."*

Consequently, we affirm the order of lower authority to the extent of demand of anti-dumping duty and IGST thereon, alongwith interest.

5.9 The issue regarding imposition of penalty under Section 117 of the Customs Act, 1962 has been considered by Hon'ble Karnataka High Court in the case of Rajesh Exports (cited supra) which held in para 8 that imposition of penalty under Section 117 is discretionary power of the authority. The relevant para is reproduced as under:-

"8. *Imposition of penalty under the above provision is discretionary power of the authority. Maximum levy of penalty is prescribed at rupees one lakh. The authority having found that the imported goods did not* *satisfy the exemption Notification No. 12/2012-Cus. and the appellant/importer had claimed ineligible duty exemption and having regard to the fact that the appellant/importer had sought for re-export of the goods waiving requirement of show cause notice, imposed penalty of Rs. 1,00,000/- while permitting the appellant/importer to re-export the imported gold bars. On examination of material on record, the Principal Commissioner has held that the imported goods are not eligible for duty exemption and further it is also observed that the appellant and the supplier/exporter are related parties and the importer does not have any prior registration of the case with the Special Valuation Branch. The imposition of penalty under Section 117 of the Act is discretionary. When the authority exercises its discretion to impose penalty, no question of law would arise from such imposition of penalty, in the absence of allegation of arbitrary or mala fide exercise of discretionary power. No such arbitrariness or mala fide exercise of discretionary power is alleged nor it is the case of the appellant that the Principal Commissioner of Customs has exercised his discretionary power under Section 117 of the Act in an arbitrary manner or in a mala fide exercise of power."*

5.10 In the instant case, goods were imported by the appellant in the month of January 2019 and May 2019. During the material time, maximum penalty under Section 117 was Rs.1 Lakh which was enhanced to Rs.4 Lakhs w.e.f 01.08.2019 vide Finance (No.2) Act, 2019. Therefore, penalty of Rs. 4 Lakhs imposed on the appellant under Section 117 is not justified when maximum penalty specified under this Section was only Rs.1 Lakh. The penalty on the appellant is accordingly reduced to Rs. 1 Lakh. With above modification, the impugned order is upheld.

6. The appeal is partly allowed.

(Pronounced in the open court on 23.09.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi