IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

2026:BHC-AS:17704-DB

WRIT PETITION NO.7882 of 2023

1. Karl Mayer STOLL Textilmaschinenfabrik GmbH
(formerly known as Karl Mayer Textilmaschinenfabrik GmbH)
having its registered office at Industriestrabe 1,
63179 Obertshausen Germany,
through Mr.Raja Poptani, Rajkot, Gujarat.

2. M/s.Karl Mayer India Private Limited,
43, Dr.V.B.Gandhi Marg, Fort, Mumbai-400 023
through Mr.Raja Poptani,
Rajkot, Gujarat. Petitioners

versus

1. Union of India

2. The Deputy Commissioner of Customs,
Customs Commissionerate, Nhava Sheva-V,
JNCH, Tal.Uran, Dist.Raigad-400 707. Respondents

WITH
WRIT PETITION NO.10561 OF 2023

1. Karl Mayer STOLL Textilmaschinenfabrik GmbH
(formerly known as Karl Mayer Textilmaschinenfabrik GmbH)
having its registered office at Industriestrabe 1,
63179 Obertshausen Germany,
through Mr.Raja Poptani, Rajkot, Gujarat.

2. M/s.Karl Mayer India Private Limited,
43, Dr.V.B.Gandhi Marg, Fort, Mumbai-400 023
through Mr.Raja Poptani,
Rajkot, Gujarat. Petitioners

versus

1. Union of India

2. The Deputy Commissioner of Customs,
Customs Commissionerate, Nhava Sheva-V,
JNCH, Tal.Uran, Dist.Raigad-400 707. Respondents

WITH
WRIT PETITION NO.316 OF 2024

1. Karl Mayer STOLL Textilmaschinenfabrik GmbH
(formerly known as Karl Mayer Textilmaschinenfabrik GmbH)
having its registered office at Industriestrabe 1,
63179 Obertshausen Germany,
through Mr.Raja Poptani, Rajkot, Gujarat.

2. M/s.Karl Mayer India Private Limited,
43, Dr.V.B.Gandhi Marg, Fort, Mumbai-400 023
through Mr.Raja Poptani,
Rajkot, Gujarat. Petitioners

versus

1. Union of India

2. The Deputy Commissioner of Customs,
Customs Commissionerate, Nhava Sheva-V,
JNCH, Tal.Uran, Dist.Raigad-400 707. Respondents

Mr.Abhishek A.Rastogi, with Ms.Pooja M.Rastogi, Ms.Meenal Songire, Ms.Aarya More, Mr.Chayank Bohra for Petitioner.

MsNitee Punde with Ms.Mamta Omle for the Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

Date of Reserving the Judgment : 20th February 2026

Date of Pronouncing the Judgment : 15th April 2026

JUDGMENT – (Per : Aarti Sathe, J.) :-

1. Heard learned counsel for the parties. With the consent of the parties, the petitions are taken up for hearing and final disposal.

2. These are three Writ Petitions which raise a common issue with regard to the jurisdiction of the Designated Officer to issue show-cause notices to the Petitioners, who are foreign exporters, primarily on the ground that the Customs Act, 1962 (hereinafter referred to as the '**Act**') would not be applicable to the transactions which have taken place in a foreign territory.

3. The impugned show-cause notices have been issued to the Petitioner no.1 which is an entity constituted in Germany, who had sold to Indian importers the allegedly mis-declared goods and that too prior to the amendment of the Act i.e. the amendment incorporating Sub-Section (2) of Section 1 of the Act by Finance Act, 2018 (Act No.XIII of 2018) with effect from 29th March 2018, and to Petitioner No. 2, which is incorporated under the Companies Act, 1956 which provides technical and support services to the Karl Mayer Group of Companies in relation to the installation, start-up and warranty cover, for machines delivered to India by the Karl Mayer Group. Considering that the facts and the issues are similar in all the three petitions. It is convenient to dispose of all the three writ petitions by this common judgment.

4. Earlier these petitions have been heard on several occasions, when substantive interim orders were passed by the co-ordinate Bench of this Court. By an order dated 25th September 2023 passed on the first two petitions (Writ Petition Nos. 7882 of 2023 and 10561of 2023) Rule was issued and a detailed order was passed by a co-ordinate Bench of this Court of which one of us (G.S.Kulkarni, J.) was a member, which is reproduced below:

> "1. The primary issue as raised in these petitions is in regard to the jurisdiction of the Designated Officer to issue show cause notices to the petitioners who are

foreign exporters, primarily on the ground that the Customs Act would not be applicable to the transactions which have taken place in a foreign territory. Admittedly a show cause notice as to the petitioners are against the entities situated in Germany who had sold goods which were subject matter of export and that too prior to the amendment of the Customs Act that is the amendment incorporating sub-section (2) of Section 1 of the Customs Act by the Finance Act,2018 (Act No.13 of 2018 with effect from 29 March 2018).

2. On 17 July 2022, we had passed a detailed order referring to the contentions as raised by the petitioners. For convenience, we refer to the said order which reads thus:-

> 1. We have heard Mr. Rastogi, learned counsel for the petitioners and Ms. Omle, learned counsel for the respondent/revenue.
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> 2. Learned counsel for the revenue seeks time to take instructions as also she has not received a copy of the proceedings from her Department.
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> 3. The challenge in this petition is to the six show cause notices annexed at Exhibit "A" to the petition. The contention as urged by the petitioners is that it is a foreign entity. It is contended that the petitioners have no idea of the transaction/invoice in question and that in no manner whatsoever, it was involved in the capacity as a foreign entity having exported its goods from Germany. The petitioners' contention is that the petitioners were engaged in any conspiracy as alleged in the show cause notice is on the face of it untenable, as the role of the petitioners is stated to be only as a supplier of the machinery from Germany, and as such it could not be that the petitioners are involved in any activity as alleged.
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> 4. The petitioners have referred to the provisions of Section 1 of the Customs Act to contend that such a show cause notice cannot be issued to the petitioners, as the Commissioner of Customs, being the authority who has issued such show cause notice, completely lacks jurisdiction, as the Act itself Liberty to the parties to apply for final hearing after the pleadings are complete, would not have any extra-territorial operation so as to become applicable to the foreign entity in Germany.
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> 5. Mr. Rastogi, learned counsel for the petitioners in support of his contention has brought to our notice that in a similar case where show cause notice was issued to the petitioners by the Commissioner of Customs (NS-V), Jawaharalal Nehru Custom House, Custom Zone-II, Mumbai and to another noticee, namely, M/s. Maruti Knit Tex, the show cause notice against the petitioners was dropped by an Order-in-Original dated 30 December, 2020. It is submitted that in responding to such show cause notice, the petitioners had urged similar contentions as been urged in the present petition that the Commissioner of Customs *inter alia* did not have jurisdiction and hence there was no question of any order levying penalty being passed against the petitioners, which was merely a foreign exporter based in Germany. It was thus urged that the petitioner being situated outside India, there was no question of any penalty being imposed or in such

context the show cause notice would be valid. Mr. Rastogi would hence submit that the position in the present proceedings is not different from the proceedings in regard to the show cause notice being dropped against the petitioners vide order dated 30 December, 2020.

6. In the context of the present case, Mr. Rastogi would submit that the petitioners are required to face unwarranted litigation, when the petitioners even remotely are not involved in regard to any allegations as made in the show cause notice. He, therefore, submits that once the authority has acted without jurisdiction in issuing the show cause notice to the petitioner, this Court by applying the well settled principles of law, needs to hold that the show cause notice is void ab initio, illegal, null and void.

7. Having perused the record as also the order passed on a similar show cause notice, we are of the opinion that the authority needs to take a position whether the show cause notice in question against the petitioner on such reasons would be invalid and whether ultimately the show cause notice would attain the same fate as in the case of the show cause notice being dropped against the petitioners by an order dated 30 December, 2020 in case of M/s. Maruti Knit Tex.

8. Learned counsel for the respondent shall take instructions on this issue. If the authority is of the opinion that the case of the petitioners in the present petition are covered by the observations of the authority in the case of M/s. Maruti Knit Tex subject matter of order dated 30 December, 2020, in that case, further adjudication of this petition would not be called for.

9. Let copy of this order be forwarded by the learned counsel for revenue to the concerned authority.

10. Stand over to 24 July, 2023 (H.O.B.)."

3. Thereafter, the proceedings were taken up for hearing on 4 September 2023 and being dis-satisfied with the approach on behalf of the department, we passed the following order:-

1. Mr. Ramalingeswara Rao, IRS, who is stated to have given instructions to the learned advocate for the respondent/revenue, a copy of which is placed on record, we are of the clear opinion that either the concerned officer has not understood the purport of our order dated 17 July, 2023 or he is intending to misguide the Court. We, accordingly, direct the officer to remain present before the Court on 11 September, 2023 at 2.30 p.m.

2. Learned counsel for the revenue has also fairly stated that it would be appropriate that the officer himself addresses the Court on this issue.

3. The above directions would not preclude the concerned officer in taking appropriate position as directed by us in paragraph 7 of our order dated 17 July, 2023.

4. Stand over to 11 September, 2023 at 2.30 p.m."

4. However, what was observed in the order was completely overlooked when we set down the proceedings to be heard on 11 September 2023, when the Court has passed the following order:-

> The State of Affairs is thoroughly disappointing. On 4th September 2023, we had passed an order that the officer who was issuing instructions to the learned counsel for Respondent Nos.2 and 3 and who had not given appropriate instructions to Respondent Nos.2 and 3 be called to remain present in the Court which was fairly agreed by the learned counsel for the Revenue when she stated that it would be appropriate that the officer himself addresses the Court.
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> 2. In pursuance of such order, today, Mr. Ramlingeshwar Rao is present in the Court, who stated that he is the Assistant Commissioner of Customs. Mr. Ramlingeshwar Rao had addressed before us everything, except what the Revenue was called upon to address and as specifically set out in Paragraph Nos.6 and 7 of our order dated 17th July 2023.
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> 3. Learned counsel for the Revenue has fairly pointed out that the show cause notice in question and which in our prima-facie, opinion is without jurisdiction, was issued by Deputy Commissioner of Customs, Nhava Sheva-V, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, District Raigad, Maharashtra by Mr. Shreyansh Mohan, who is stated to be no more occupying the said position. The
> officer issuing show cause notice is supposed to first ascertain, whether, he has jurisdiction to issue show cause notice. Thus, asking
> Mr. Ramlingeshwar Rao to give instructions to the learned Advocate for Respondent Nos.2 and 3 was totally incorrect and unjustified. We are also at a loss to understand as to how Mr. Ramlingeshwar Rao can justify the show cause notice issued by his senior officer, Deputy Commissioner of Customs and he is unable to assist the Court in totality. In these circumstances, we would, therefore, require the Deputy Commissioner of Customs, who has issued the impugned notice to justify the said action by placing on record an affidavit. Let such affidavit be placed on record on or before the adjourned date of hearing.
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> 4. Accordingly, stand over to 25 th September 2023, High on Board.
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> 5. Reply affidavit, if any, be served on the Advocate for the Petitioner before 21st September 2023."

5. Today when the proceedings are listed before us on the backdrop of such prior orders, Mr. Mishra, learned Counsel appearing for the respondents would submit that in issuing the impugned show cause notice, the department has basically relied on the decision of the learned Single Judge of the CESTAT in the case **Prerna Singh Vs. Commissioner of Customs (Import-II), Mumbai**, hence, the respondents were justified in issuing the show cause notice to a foreign party. Prima facie we are not satisfied with the stand of the department even assuming that the provisions of the amended sub-section (2) of Section 1 of the Customs Act

are taken into consideration as applicable to the facts and circumstances in the present case.

6. Accordingly, as purely an issue of law arises for consideration in the present proceedings which goes to the root of the authority and jurisdiction of the designated officer to issue the impugned show cause notices to a foreign entity, we would be required to hear the parties on the merits of their respective contentions, at the final hearing of the petition. Hence, **Rule.** Respondents waive service.

7. In the light of the above discussion and considering the provisions of Section 1(2) of the Customs Act prior to its amendment by Finance Act,2018 (w.e.f. 29.3.2018) as also considering the effect of the said amendment, in our opinion, the petitioners have made out a prima facie case for grant of interim reliefs. Hence, pending the hearing and final disposal of the petitions, the impugned show cause notices shall stand stayed. Ordered accordingly.

8. Liberty to the parties to apply for final hearing after the pleadings are complete.

5. As similar reliefs are prayed for, it would further be convenient to reproduce the prayers in the lead petition (Writ Petition No.7882 of 2023), which are reproduced below :

"a. Issue a writ, order or direction in the nature of Mandamus, or any other appropriate writ, order or direction declaring that the Respondent no.2, 3 and 4, as the case may be, have issued the impugned SCNs (Exhibit A), as set out at pargraph 5 of this Writ Petition, illegally, arbitrarily and without jurisdiction;

b. issue a writ, order or direction in the nature of Certiorari, or any other other appropriate writ, order or direction calling for the record and proceedings of the impugned SCNs (Exbibit A), as set out at paragraph 5 of this Writ Petition, and all other records pertaining thereof, to consider the validity, legality and propriety thereof, and whereafter, be pleased to quash and/or set aside the impugned SCNs (Exhibit A);

c. direct Respondents that pending final hearing and disposal of this Writ Petition, to not proceed with the adjudication proceedings in relation to the impugned Show Cause Notices, as set out at paragraph 5 of this Writ Petition;

d. stay passing of any final orders in relation to the impugned SCNs (Exhibit A), as set out in paragraph 5 of this Writ Petition;

e. grant ex-parte and/or ad-interim reliefs in terms of prayer clauses (c) and/or (d); and

f. grant such other reliefs as this Hon'ble Court may deem fit, proper, just, and/or necessary in the interest of complete justice."

6. Briefly, the facts which are common in these three petitions are as follows:

(i) Petitioner No. 1 is a company incorporated under the laws of Germany and is, *inter alia*, engaged in the manufacturing and selling of textile machinery in Germany and internationally, including India;

(ii) Petitioner No. 2 is a private limited company incorporated under the Companies Act, 1956. It is, *inter alia*, engaged in providing technical and support services to the Karl Mayer Group of Companies in relation to installation, start-up and warranty cover for the machines delivered to India by the Karl Mayer group. Petitioner No. 2 is also engaged in assembling creels for warping machines and also has a production facility for the said purpose at Ahmedabad;

(iii) During June-2014 to May-2017 Petitioner No. 1 sold warp knitting machines to certain Indian importers. The Directorate of Revenue Intelligence, Ludhiana (`DRI-L' for short) started an investigation based on intelligence that certain importers in India were engaged in importing "high speed warp knitting machines" manufactured by Petitioner No. 1 and the said importers were mis-declaring the machines as "fully fashioned high speed knitting machines", and claiming exemption under Notification No.12/2012-CE dated 17th March 2012 and/or Notification No.16/2015, dated 1st April 2015, as the case may be (hereinafter referred to as the exemption notifications);

(iv) On the basis of the above, the DRI-L initiated an inquiry against several importers who had imported the said machines. Further, statements of authorized representatives of these importers were recorded with respect to the

import of the said machines under bills of entry and it was alleged that the importers had allegedly mis-declared the description of said machines;

(v) On the basis of the investigation carried out, in so far as the importers were concerned, Petitioner No. 2's office at Ahmedabad was visited by the officers of DRI-L. A summons dated 11th October 2017 bearing Sr. No.949 was served on Petitioner No. 2. Mr. Piyush Pathak, the representative of Petitioner No. 2 at the Ahmedabad office, submitted a letter to the DRI-L officials setting out the business details carried out at Ahmedabad and his incapacity to assist the DRI-L officials in technical matters. Consequently, the DRI-L again issued a summons to Petitioner No. 2's Mumbai office for appearance and submission of brochure/ literature of machines manufactured by Petitioner No. 1, which have been imported into India. It is the Petitioners' contention that the said summons was fully complied with;

(vi) By letter dated 12th October 2017, the Chief Executive Officer of Petitioner No. 2, recorded that Petitioner No. 2 was not connected with the imports in question, and that the machines are imported directly by various importers from foreign suppliers, i.e., Petitioner No. 1 in the present case. It was stated that the brochures of the machines are available in India and can be downloaded from the Internet;

(vii) On 30th October 2017, the statement of Mr. Kevin Socha, Managing Director of Petitioner No. 2 was recorded under Section 108 of the Act by the officers of DRI-L. Consequently, a summons dated 16th January 2019 was issued to the Managing Director of Petitioner No. 2;

(viii) On 29th January 2019, Petitioner No. 2 submitted a reply, once again highlighting its inability in joining the investigation, inasmuch as it was its stand that Petitioner No. 2 does not have any information in respect of the transactions in question. It is the contention of Petitioners' that between the period 11th June 2019 to 18th May 2021, the Petitioners were in receipt of 111 show-cause notices, which are the subject matter of challenge before the Punjab & Haryana High Court on similar grounds in CWP-2905-2023. The Punjab and Haryana High Court by an order dated 14th February 2023 stayed the passing of a final order pertaining to the 111 show-cause notices;

(ix) On 1st July 2020, Petitioner No. 1 was rebranded as "Karl Mayer STOLL Textilmaschinenfabrik GmbH" after its merger with STOLL. The sale of Petitioner No. 1's machines in India is exclusively handed over to M/s. A.T.E Enterprises Private Limited;

(x) Further, on 30th December 2020, 31st December 2020, and 5th March 2021 Orders-in-Original have been passed in case of 9 Indian importers, to whom Petitioner No. 1 sold the machines, wherein the show-cause notices against Petitioners were dropped on the ground that there was no jurisdiction for imposition of penalty against the Petitioners.

7. On the basis of the DRI-L investigation for the period between 31st December 2020 and 18th May 2021, the Respondents issued show-cause notices under Section 124 read with Section 28 of the Act to the Petitioners, alleging that the Petitioners had aided/abetted the main noticees, i.e., Indian importers, to perpetuate the import fraud. The main noticees were different importers situated

in India. Besides the main noticees, the show-cause notices were also issued to Petitioner No. 1 through Petitioner No. 2. Further, summons in this regard was also issued to Petitioner No. 2, seeking information relating to the imports in question, despite Petitioner No. 2's non-involvement in sales of Petitioner No. 1's machines in India. Further, by way of aforesaid show-cause notices, penalties under Sections 112 and 114AA of the Act were proposed to be levied on the Petitioners.

8. Being aggrieved by the aforesaid show-cause notices, the present petition has been filed by the Petitioners.

9. We have heard learned counsels for the parties. Mr. Abhishek A. Rastogi along with Ms. Pooja M. Rastogi and Ms. Meenal Songire along with Ms. Aarya More and Mr. Chayank Bohra appeared for the Petitioners, and Ms. Nitee Punde along with Ms. Mamta Omle appeared for the Respondents. With the assistance of learned counsel for the parties, we have perused the record and the impugned show-cause notices, and we proceed to decide the present petitions.

10. Learned counsel for the Petitioners have submitted that the aforesaid show-cause notices are liable to be quashed and set aside, in as much as the same are completely without jurisdiction and without authority of law. The submissions made on behalf of the Petitioners can be summed up as follows :

i. It was contended that the impugned show-cause notices are ex facie without jurisdiction in so far as they purport to exercise adjudicatory and penal authority over Petitioner No. 1, an exporter situated outside India, for a period prior to 29th March 2018. At the relevant time, the statutory framework under the Act did not confer extraterritorial jurisdiction upon Indian customs authorities to

initiate penal proceedings against persons located beyond the territorial limits of India. Jurisdiction of a statutory authority must be traceable to express legislative authorization; in the absence of such conferment, any exercise of coercive or adjudicatory power is *void ab initio*. It is a settled principle of public law that jurisdiction cannot be assumed by implication, equity, or administrative convenience, and any action taken without jurisdiction is a nullity in the eyes of law.

ii. It was further submitted that the amendment to Section 1(2) of the Act, which came into effect on 29th March 2018, expanded the territorial reach of the enactment. However, such enlargement of jurisdiction cannot operate retrospectively so as to validate proceedings for prior periods. Unless a statute expressly provides for retrospective application, and particularly where penal consequences ensue, the provision must be construed prospectively. Penal statutes are subject to strict interpretation, and any ambiguity must be resolved in favour of the person sought to be penalised. Therefore, in the absence of explicit legislative intent granting retrospective extra-territorial operation, the Respondents could not rely on the amended provision to sustain proceedings relating to an earlier period.

iii. It is next submitted that this position is constitutionally reinforced by Article 20(1) of the Constitution of India, which prohibits conviction or imposition of penalty under an ex post facto law. The constitutional safeguard is not confined merely to criminal convictions but extends to all proceedings that are penal in nature or impose civil consequences of a punitive character. The Respondents' attempt to invoke a post-2018 statutory enlargement ofjurisdiction

to penalize conduct alleged to have occurred earlier directly offends this constitutional prohibition. Any interpretation permitting such retrospective penal exposure would render Article 20(1) otiose and must therefore be rejected.

iv. It is next submitted on behalf of the Petitioners that Article 245 of the Constitution circumscribes legislative competence territorially and mandates that laws of Parliament may have extra-territorial operation only where the statute expressly or by necessary implication so provides. In the absence of such explicit conferment prior to 29th March 2018, authorities functioning under the statute could not have assumed jurisdiction over foreign entities situated outside India. Administrative or quasi-judicial authorities derive their powers strictly from the statute and cannot exercise a wider jurisdiction than that contemplated by the legislature itself. Consequently, proceedings initiated against a foreign exporter for a pre-amendment period are *ultra vires* the parent enactment.

v. It is submitted that the impugned show-cause notices suffer from a fundamental jurisdictional defect that strikes at their very root. The defect is not procedural but substantive and incurable, rendering the entire proceedings *non-est*. The Respondents' assumption of authority over a person situated outside India, for a period when the statute did not extend to such persons, amounts to an impermissible exercise of power and is liable to be quashed on this ground alone.

vi. It was further submitted that the Respondents have committed a manifest error of law in placing exclusive reliance upon the decision rendered by a Single Member Bench in **Prerna Singh, CEO M.s Seville Products Ltd, vs.**

Commissioner of Customs[1], while disregarding binding precedents rendered by Division Benches of coordinate jurisdiction. The Doctrine of Judicial Discipline and hierarchical precedent mandates that decisions of benches of superior numerical strength prevail over those delivered by benches of lesser strength. A Single Member Bench decision, even if subsequent in time, cannot override or dilute the binding force of a Division Bench ruling. The Respondents, being quasi-judicial authorities, were duty-bound to follow the law laid down by Division Benches and could not selectively rely upon a contrary Single Member decision merely because it suited their case.

vii. It was therefore contended that it is settled principle that coordinate benches must follow earlier decisions of benches of equal or larger strength and further Supreme Court has consistently emphasized that judicial propriety requires authorities and tribunals to adhere to binding principles and that deviation therefrom amounts to judicial indiscipline.

viii. It was submitted that the impropriety is compounded by the fact that subsequent Division Bench authorities, including the decision in **Shri Ankur Agarwal, Director vs. Principal Commissioner**[2], reaffirmed the legal position contrary to that adopted in Prerna Singh (supra). Once a Coordinate Bench of greater strength has reiterated the governing principle, any contrary Single Member view stands impliedly eclipsed and cannot be treated as good law for precedential purposes. Administrative or adjudicating authorities cannot choose between conflicting precedents based on preference; they must apply the binding

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1 (Import-III)-Mumbai [C/89693/2018] - CESTAT, Mumbai

2 [C/50079/2020] - CESTAT, Delhi

one as determined by the settled rules of precedent. Failure to do so renders the impugned action arbitrary and violative of Article 14 of the Constitution of India, as similarly situated persons would otherwise be subjected to inconsistent legal standards. It was therefore submitted that the Respondents' reliance solely upon Prerna Singh (supra) is legally untenable and contrary to the settled hierarchy of precedential authority. The impugned action suffers from a jurisdictional and legal infirmity insofar as it is founded upon a non-binding precedent, while ignoring binding Division Bench rulings.

ix. It was further contended that since the decisions of the division benches of the Tribunal which have decided the issue in favour of the taxpayers have not been challenged by the Revenue by Appellate proceedings, the same have attained finality and cannot be disputed in other cases/ proceedings. Administrative authorities cannot circumvent this finality by re-agitating the same question in other proceedings involving identical facts and issues. It was therefore contended that in the present case the Respondent's attempt to question territorial jurisdiction despite earlier division bench ruling in favour of the Petitioner, accepted by the revenue without appeal, constitutes a clear abuse of the process of law and is legally impermissible. It was therefore submitted that the issue stands settled and is no longer *res integra*.

11. An affidavit-in-reply dated 21st September 2023 has been filed on behalf of the Respondents, and also written submissions have been submitted in support of the contentions raised by the Respondents. The submissions made on behalf of the Respondents can be summarized as follows-

i. The Respondents submit that Petitioner No. 1 is a supplier and does business with importers pan India, and further that Petitioner No. 1 along with its selling agent in India, M/s A.T.E Enterprises Private Limited has aided and abetted the importers in commission of the import fraud.

ii. The Respondents have also sought to place reliance on the statement of Mr. Kevin Socha, Managing Director of India Operations of Petitioner No. 2, recorded under Section 108 of the Act, wherein he deposed that several Indian importers have emailed M/s A.T.E. Enterprises Private Limited to change the description of the machines being imported from HKS3M Tricot Machine to HKS3M High-Speed Fully-Fashioned Machine. In turn, the said M/s A.T.E. Enterprises emailed the German manufacturer, i.e. Petitioner No. 1 to change the description of the aforesaid machines, which according to the Respondents, Petitioner No. 1 has done. It is therefore the Respondents' contention that Petitioner No. 1 has aided and abetted the Indian importers knowingly by changing the description of the machines which were to be imported and thereby helped them in claiming the benefit of the exemption notifications.

iii. The Respondents have also submitted that Petitioner No. 1, though situated outside India is liable for the penalties under the Act and insofar as the issue of territorial jurisdiction is concerned, the agent of Petitioner No. 1, i.e., Petitioner No. 2 has been provided documents, who in turn provided the documents to the Indian importers for filing before the customs authorities and claimed the benefit of the exemption notifications. In view thereof, the same was to

be treated as an offence committed in India, and hence, the provisions of the Act for imposing penalties on Petitioner No. 1, who is situated outside India, are justified.

iv. The Respondents also sought to place reliance on the decisions of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of Prerna Singh (supra). In view thereof, the Respondents submitted that the DRI-L had reasons to believe that for the purposes of Sections 112 and 114AA of the Act, penalties would be imposable on Petitioner No. 1 since they aided and abetted in the evasion of customs duty in India.

ANALYSIS AND FINDINGS :

12. Considering the rival contentions, we proceed to render our findings on the present petitions.

13. After perusal of the records and looking at the factual conspectus of the case, we are of the view that in the present petition, liability is sought to be foisted on the Petitioners merely because the importers of goods are situated in India, and they had allegedly mis-declared the warp knitting machines imported from Petitioner No. 1 as "fully-fashioned high-speed knitting machines" and claimed the benefit of the exemption notifications. This liability has been foisted without attributing any role to the Petitioners. This to our mind, is certainly not the scheme of the Act, where a foreign exporter cannot be made liable for the wrongs of the importer, whose privity qua the goods being exported from a foreign country qua such export would end on the goods being shipped to the satisfaction of the Indian importer. The liability qua the goods on their arrival at the Indian port, would be totally of the importer to pay the custom duty including to bear any additional

duty on classification etc. In the context of Section 1 of the Act (post 2018 amendment), in the facts of the present case, the Department has not supported its case on any material evidence to establish that the Petitioner/foreign exporter in law could be held liable on the issue of any purported mis-declaration.

14. Further, the foreign exporter, i.e., Petitioner No. 1 is admittedly situated outside India, hence qua the Petitioner, the applicability of the Act did not extend to the territory outside India at the relevant point of time. The amendment to Section 1 of the Act, in so far as the applicability of the Act is concerned, was made in the year 2018, with effect from 29th March 2018. The said amendment provides that save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. This amendment, therefore, would apply with effect from 29th March 2018, and specifically in cases where there is a contravention or any offence which is committed outside India by any person. Therefore, the extraterritorial applicability of the Act has been introduced by way of this amendment only post-2018 and to such limited extent. The Court is not concerned on any criminal action/issue in the present proceedings.

15. In the facts of the present case, even otherswise, the alleged misdeclaration of the imports was much prior to 2018 and hence the provisions, if at all, of the amended Section 1 of the Act would not apply in the facts of the present case. Aso the alleged acts of the importer, as held above, the foreign exporter cannot be foisted with any liability within the framework of the law qua the lack of jurisdiction of the customs oficers.

16. At this juncture it would be pertinent to examine the other provisions of the Act which stipulate the importer's obligation, insofar as import of goods in India is concerned. The provisions of Section 111(m) of the Act provide that if any goods do not correspond in respect of value or in any other particular with the entry made under this Act, or in the case of baggage, with the declaration made under Section 77 of the Act, and in respect of goods under trans-shipment, the declaration for trans-shipment referred to in proviso to Section 54(1) is not correct, then the said goods are liable for confiscation. Further, Section 46 of the Act stipulates the conditions which an importer has to fulfil for entry of goods on the importation thereof in India. Further, Section 17(1) of the Act deals with assessment of duty, and the said Section casts a duty on any importer entering any imported goods under Section 46, or an exporter entering any goods to be exported under Section 60, to self-assess the duty, if any, leviable on the goods. The provisions of Sections 17, 46, and 111(m) of the Act are reproduced below:

> **17. Assessment of duty**.—(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
>
> [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]
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> (3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]
>
> (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may,

without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 8 *** and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed]:

[Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner:

Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented 10[at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall 11*** make and subscribe a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 1 [and such other documents relating to the imported goods as may be prescribed].

[(4A) The importer who presents a bill of entry shall ensure the following, namely: —

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54]"

17. On a conjoint reading of the above provisions, it is clear that the responsibility post importation of goods in India rests with the importer and the foreign exporter cannot be made liable for the violation in respect thereof. In the facts of the present case, there was no role played by such exporter, i.e., Petitioner No. 1, with regard to the alleged mis-declaration of the imported machines and therefore, the show-cause notices could not be issued to Petitioner No. 1.

18. As a corollary thereto, the penalties which have been imposed under Section 112 and 114AA of the act also have no legs to stand on, inasmuch as there is no role that is attributable to the Petitioners making them liable for penalty under Section 112 of the Act. The provisions of Section 112 of the Act are reproduced below:

112. Penalty for improper importation of goods, etc.—Any person,—

> (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
> (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;
> (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:
> Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]
> [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;
> (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 4 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;
> (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

19. On a plain reading of the aforesaid Section, it is clear that the Department has not made out a case or established that there was any act or omission on the part of Petitioner No. 1 making the said goods liable for confiscation under Section 111 of the Act, nor has Petitioner No. 1 carried, removed, deposited, harboured, kept, concealed, sold, or purchased any goods which it knew or had reason to believe were liable for confiscation under Section 111 of the Act. The Department, in fact, on an alleged mis-declaration of imports by Indian importers, has sought to penalize the Petitioners, which is against the mandate of law and does not fulfil conditions as envisaged in Section 112 of the Act. The charge of abetment and aiding the Indian importers has also not been established by the Department.

Neither has any evidence been adduced by the Department to show the active role played by the Petitioners in perpetrating the alleged mis-declaration of the imported goods. We are therefore of the view that in the absence of any ingredients which are prescribed in Section 112 of the Act, the Petitioners cannot be made liable for the penalty as sought to be imposed by the impugned show-cause notices.

20. As we have held that the Petitioners are not liable for penalty under section 112 of the Act, they will also not be liable for penalty under section 114AA of the Act as the same is in respect of penalty for use of false and incorrect material and is imposable if a person knowingly or intentionally makes, signs, or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business. In the facts of the present case neither Petitioner No. 1, nor Petitioner No. 2 have submitted or caused submission of false information in as much as the entire importation and the related compliance was the responsibility of the Indian importers. For ease of reference, Section 114AA of the Act reads as under:-

> **114AA. Penalty for use of false and incorrect material.—**If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value o f goods.

21. We are also not inclined to accept the submission made on behalf of the Respondents that the issue regarding applicability of extra-territorial jurisdiction of Section 1 of the Act has been considered by the CESTAT in the case of Prerna Singh (supra), inasmuch as the same has been rendered on a different facts. Even otherwise, the decision of Prerna Singh (supra) has been distinguished by the Division Bench of the CESTAT in the case of Ankur Agarwal, Director vs.

Principal Commissioner (supra), wherein it was held that the decision rendered in the case of Prerna Singh (supra) had failed to consider that the amendment made in Section 1(2) of the Act came into effect from 29th March 2018 was applicable only prospectively. Hence reliance made by the Respondent on the decision in Prerna Singh (supra) is misplaced and does not assist the Department to canvas its contentions further.

22. In so far as the contention of the Department that the Orders-in-original dated 30th December 2020, passed in the case of certain other Indian importers, to whom Petitioner No. 1 had sold similar machines, dropping the show-cause notices issued against the Petitioners have been appealed by the Department before the CESTAT, the same would not assist the Respondents inasmuch as there is no final outcome in the said appeals and the same are pending adjudication.

23. Thus looked from any angle, we are of the considered view that the impugned show-cause notices in all the three petitions, ought not to have been issued to the Petitioners, and therefore the same are liable to be quashed and set aside, including any recovery notices that may have been issued in pursuance thereto.

24. In terms thereof, Rule made absolute in terms of prayer clause (a) and (b). The companion Writ Petition No.10561 of 2023 and Writ Petition No.316 of 2024 are also allowed in the similar terms. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)