

**2014 (2) ECS (122) (HC- Ahm)**

In the High Court of Gujarat at Ahmedabad  
**SWATI MENTHOL & ALLIED CHEMICALS LTD**  
**VS.**  
**JOINT DIRECTOR - DIRECTORATE OF REVENUE**  
**INTELLIGENCE:**

**Date of Decision: 08.01.2014**

Special Civil Application No. 2894/2013

Appearance

Mr. Harshadray A Dave, Advocate

For the petitioners

Mr. Hridiay Buch, Advocate

For the Respondents

**CORAM**

Honourable Mr. Justice Akil Kureshi

Honourable Mr. Justice Sonia Gokani

**“All the officers of the Directorate of Revenue Intelligence are appointed as the officers of the Customs. Under the notification dated 7.3.2002, the officers of DRI have been given jurisdiction over the whole of India. Most significant notification is one of 6.7.2011. As noted, the notification, for the purpose of section 2(34) of the Customs Act, assigns functions of the proper officer to the various officers including those under the Directorate of Revenue Intelligence, such as Additional Director, Joint Director, Deputy Directors and Assistant Directors for the purposes of sections 17 and 28 of the Customs Act.” (Para 30)**

**ORAL JUDGMENT**

**Per: Honourable Mr. Justice Akil Kureshi**

1. Petitioners have filed this petition with following prayers:-

“17. In view of what is stated hereinabove and the grounds taken, the Petitioner most respectfully prays that this Hon’ble Court may be pleased-

- (i) To issue writ of certiorari or other appropriate writ, order or direction to quash the illegal Panchnama dated 3.1.2012(Annexure No.2), illegal seizure memo dated 9.2.2012(Annexure No.4) and show-cause notice dated 24.1.2003(Annexure No.23) issued by Respondent No.1 and declare the seizure of the imported goods as illegal, wholly without jurisdiction and unauthorized by law;
- (ii) To issue writ of certiorari and quash the illegal orders of

provisional release and coercive collection and recovery of differential duty of Rs.10,04,322/-, Bank Guarantee of Rs.17,25,000/- and Bond for Rs.68,00,127/- and direct the same to be null and void, and unauthorized by law;

- (iii) To issue writ of mandamus to the Respondents to return the Bond for Rs.68,00,127/-, Bank Guarantee of Rs.17,25,000/- and differential duty illegally collected of Rs.10,04,322/- along with interest to the petitioner;
- (iv) To issue writ of mandamus to Respondent No.2 not to proceed with any action for adjudication of the impugned illegal notice issued without jurisdiction by Respondent No.1 which is also barred by limitation and unauthorized by law; (v) To issue writ of mandamus to Respondents No.1,3 & 4 to ensure that they do not interfere in respect of any case or proceeding including assessment of any Bill of Entry made by the competent jurisdictional Customs authorities and further to restrain Respondents No.1,3 & 4 from interfering any proceeding or issuing any orders and directions to other officers as no one is subordinate to them and the DRI is not a superior or higher authority to dictate or direct any particular case to be dealt with or decided in any particular manner according to the whims of the DRI officers;
- (vi) To summon the records of lower authorities; (vii) To stay the proceedings pursuant to the illegal seizure, detention and show-cause notice till the disposal of this Petition by this Hon'ble Court;
- (viii) To grant early out-of-turn hearing to the Petitioner;
- (ix) To award exemplary costs to the Petitioner to be paid by Respondents No.1,3 & 4.
- (x) To pass such other order or orders as this Hon'ble Court may deem fit and proper having regard to the facts and circumstances of the case."

2. Briefly stated, facts are as under:- 2.1 The petitioners imported consignment of goods declaring it to be "Eucalyptol" at Nhava Sheva Port, Raigad. The petitioners filed Bill of Entry No.5563058 on 26.12.2011 and declared the import of "Eucalyptol" of 14400 kgs from China. Eucalyptol is classifiable under Customs Tariff Heading No.29092000.
3. Directorate of Revenue Intelligence, however, under a belief that the petitioners had made mis-declaration and the goods actually were not "Eucalyptol" prevented clearance of the goods from the

port and demanded higher rate of duty on the ground that the imported goods were "Eucalyptus Oil" falling under the Customs Tariff Heading No.33012924. It is not in dispute that "Eucalyptus Oil" would invite customs duty at the rate of 20% as against "Eucalyptol", which would invite duty at 7.5%.

4. Eventually at the request of the petitioners, the goods were cleared provisionally on 21.2.2012 upon the petitioners paying higher duty and also furnishing bond for the full value of goods with 25% bank guarantee. The petitioners have deposited a sum of Rs.10,04,049/- towards duty and executed bond for a sum of Rs.68,00,127/- and also gave bank guarantee of Rs.17,25,000/-.
5. DRI authorities continued inquiries and summoned the petitioners for recording statements and collected documents. Eventually on 24.1.2013, Respondent No.1, Joint Director, Directorate of Revenue Intelligence, Ahmedabad issued a show cause notice and called upon the petitioners to:-

"22.... show cause to the Additional/Joint Commissioner of Customs (Export), having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Uran, District, Raigad, Maharashtra, as to why:-

- (i) The classification of the goods Eucalyptus Oil imported by mis-declaring the same as Eucalyptol CTH 29092000 should not be rejected and re-classified correctly under CTH 33012924.
- (ii) The goods i.e. 14400 Kgs of Eucalyptus Oil valued at Rs.68,00,127/- imported under Bill of Entry No.5563058 dtd.26/12/2011 by mis-declaring the same as Eucalyptol which were seized on 09/02/2012 should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- (iii) The differential duty of Customs amounting to Rs.10,04,322/-, as detailed in Annexure A, should not be demanded and recovered from them under section 28(4) of the Customs Act,1962.
- (iv) Interest should not be charged and recovered from them under section 28AA of the Customs Act, 1962.
- (v) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962;
- (vi) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

23. Shri Sanchit Gupta, Director of M/s.Swati Menthol & Allied Chemicals Ltd, Bareilly Road, Opp. Akashwani, P.O.Modipur, Rampur, Uttar Pradesh-244901 is also hereby called upon to show

cause to the Additional/Joint Commissioner of Customs (Export), having his office at Jawaharlal Nehru Customs House, Nhava Sheva, Uran, District, Raigad, Maharashtra, as to why Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962.

24. The above noticee are further required to state specifically in their written replies as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person. They should produce at the time of showing cause, all the evidences upon which they intend to reply in support of their defence.
25. They are further required to note that their reply should reach within 30(thirty) days or within such extended period as may be allowed by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this SCN or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.
26. The documents listed in Annexure 'B' to this show cause notice are relied upon in this case and the copies of the same are enclosed with this notice.
27. This Show Cause Notice is limited to the seized goods only and is issued without prejudice to any other action that may be taken against them, under this Act or any other law for the time being in force, or against any other company, person(s), goods and conveyances whether named in this notice or not."
6. At this stage, the petitioners filed the present petition. Though number of prayers have been made as noted above, principal grievances of the petitioners are that the DRI had no authority or jurisdiction to intervene when the goods were imported at Nhava Sheva port at Mumbai and that the action of detention and seizure of goods and thereafter release on provisional basis on unfair and harsh conditions according to the petitioners was wholly illegal. Second aspect of the petitioners' grievance, which has been extensively debated before us pertains to the validity of the show cause notice dated 24.1.2013. The case of the petitioners is that no DRI authority much less stationed at Ahmedabad would have jurisdiction to issue show cause notice under section 28 of the Customs act, 1962 for the goods which were imported at Nhava Sheva port at Raigad. We would principally focus on this latter challenge of the petitioners.

7. In the context of the petitioners' challenge to the impugned show cause notice, the counsel drew our attention to section 2(34) of the Customs Act, which defines the term "proper officer". Our attention was also drawn to sections 17,18 and 28 of the Customs Act where there is reference to the proper officer, who can issue notice and adjudicate on contested issues.
8. Counsel submitted that since respondent No.1 was not a proper officer in terms of section 2(34) of the Customs Act, he had no authority to issue notice under section 28 of the said Act.
9. Heavy reliance was placed on the decision of the Apex Court in the case of Commissioner of Customs vs. Sayed Ali reported in 2011 (265) E.L.T. 17 (SC) wherein in the context of the definition of proper officer under section 2(34) of the Customs Act, the Apex Court held and observed that it is only such a Customs Officer, who has been assigned the specific functions of assessment and re-assessment of duty in the jurisdictional area where the import concerned has been effected, by either the Board or the Commissioner of Customs, in terms of section 2(34) of the Act would be competent to issue notice under section 28. It was observed that any other reading of section 28 would render the provisions of section 2(34) of Act otiose inasmuch as the test contemplated under section 2(34) of the Act is that of specific conferment of such functions. Revenue's contention that once territorial jurisdiction was conferred, Collector of Customs (Preventive) becomes a "proper officer" in terms of section 28 of the Act was rejected observing that it would lead to a situation of utter chaos and confusion as all officers of customs, in a particular area would be treated as "proper officers". It was, therefore, held that "in our view, therefore, it is only the officers of the Customs, who are assigned the functions of assessment, which of course, would include the reassessment, working under the jurisdictional Collectorate within whose jurisdiction bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under section 28 of the Act."
10. Our attention was also invited to sub-section (11) of section 28 of the Customs Act which was introduced by way of an amendment by amending Act, 14 of 2011 with effect from 16.9.2011 to save certain proceedings under sections 17 and 28 of the Customs Act, which would have otherwise been hit by the ratio of the judgment of the Supreme Court in the case of Sayed Ali (supra). Our attention was also drawn to the circular of the Central Board of Excise & Customs dated 23.9.2011 explaining the amendments brought in by virtue of sub-section (11) of section 28 of the Customs Act.
11. Learned counsel for the petitioners also brought to our notice a

subsequent notification No.40/2012 dated 2.5.2012 issued by the Central Board of Excise and Customs in which the Board assigned the officers mentioned in the notification the functions under the Customs Act, 1962 as specified in Column No.3 of the Table. On the basis of such notification, the counsel submitted that even in the said assignment of functions the DRI authorities have not been empowered to issue show cause notice and adjudicate on the questions of short-levy or non-levy of duty etc. under section 28 of the Customs Act. Reliance was placed on the decision of the Apex Court in the case of Union of India vs. Ram Narain Bishwanath reported in 1997(96) ELT 224 to contend that it is only the Customs Authority where the goods are imported would have jurisdiction to adjudicate on the issues connected thereof.

12. Reliance was placed on the decision of the Apex Court in the case of Raza Textiles Ltd. vs. Income- tax Officer, Rampur reported [1973] 87 ITR 539 to contend that when the jurisdictional fact is lacking the action of the authority of issuing notice and assuming jurisdiction would be rendered invalid.
13. On the other hand, learned counsel Mr. Hriday Buch for the respondents opposed the petition challenging that the show cause notice has been issued by a proper officer, who had been vested with the powers by virtue of series of notifications issued by CBEC. Our attention was drawn to the affidavit-in- reply filed by Dr. Arvind Kumar, Deputy Director of Revenue Intelligence dated 4.4.2013 in which following averments have been made:-

“6. Without prejudice to the aforesaid contentions, it is submitted that in terms of notification no.31/97-CUS(NT) dtd. 07/07/1997 the Central Government has appointed all the officers of the Directorate of Revenue Intelligence as officers of Customs. Further in terms of notification No.17/2002-CUS(NT) dtd.07/03/2002 the Additional Director General, Additional Director/Joint Director and Deputy/ Assistant Director of Directorate of Revenue Intelligence have been appointed as officers of Customs with jurisdiction over the whole of India. I further say and submit that in terms of notification No.44/2011-CUS (NT) dtd.06/07/2011 the Central Board of Excise and Customs has assigned the functions of the proper officer for the purpose of Section 17 and Section 28 of the Customs Act, 1962 to the Additional Director General, Additional Director/Joint Director and Deputy/ Assistant Director of Directorate of Revenue Intelligence.”
14. Our attention was drawn to notifications No.31 of 1997 dated 7.7.1997, No.44 of 2011 dated 6.7.2011 and No. 17 of 2002 dated 7.3.2002 to contend that Officers of Revenue Intelligence are considered as Customs Officers and their functions are also properly assigned.

15. Counsel contended that in view of such notifications neither the decision in the case of *Sayed Ali* (supra) nor the subsequent notification of the Board dated 2.5.2012 would alter the situation. He submitted that notification dated 2.5.2012 did not rescind the previous notifications, which continue to hold the field.
16. Having thus heard learned counsel for the parties and having perused the documents on record, a short question that calls for consideration is whether in facts of the present case, the impugned show cause notice issued by respondent No.1-Joint Director of Revenue Intelligence had authority to do so. Section 2(34) of the Customs Act, 1962 defines the term "proper officer" as under:-

"2(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;"
17. The term "proper officer" is used at various places under the Act. Under section 17 it is proper officer who can verify the self-assessment of goods and examine or test any imported goods or exported goods as may be necessary. Likewise under section 18, it is the proper officer, who may undertake the exercise of provisional assessment and direct the importer to pay difference in duty or furnish security as deemed fit for provisional release of the goods.
18. Section 28 of the Customs Act with which we are directly concerned pertains to recovery of duties not- levied or short-levied or erroneously refunded. It provides for a complete mechanism for recovery of duties not-levied, short-levied or erroneously refunded or any interest has not been paid, part paid or erroneously refunded, in which case proper officer shall serve a notice on the person chargeable with the duty or interest requiring to show cause why he should not pay the amount specified in the notice. The period of limitation prescribed for issuance of the notice is one year in normal cases and extended period in cases of collusion, willful mis-statement or suppression of facts is 5 years.
19. The question of proper officer, therefore, assumes considerable significance since it is only the proper officer, who under sub-section(1) of section 28, can issue such a show cause notice.
20. We have noticed that under sub-section (34) of section 2 a proper officer is defined as a person in relation to any function to be performed under the Act to mean the officer of customs who is assigned those functions by the Board or Commissioner of Customs. Thus, the proper officer is a person, who has been assigned functions by the Board or by the Commissioner of Customs in relation to such functions to be performed under the Act.



21. It is in this respect that the Supreme Court in the case of Sayed Ali (supra) held that it is only the officers of Customs, who are assigned the functions of assessment working under the jurisdictional of Collectorate/Commissionerate within whose jurisdiction bills of entry or baggage declaration had been made and the consignment having been cleared will have a jurisdiction to issue notice under section 28 of the Act. This was a case in which the assessee who was engaged in the business of carpet manufacturing and export was charged with the misuse of the Export Pass Book scheme by selling goods cleared duty free in the open market or selling the pass book in premium in violation of the restrictions imposed on such sale. Investigation was conducted by the Marine and Preventive Wing of the Customs and the Assistant Collector of Customs (Preventive), Mumbai issued a show cause notice alleging violations of provisions of section 111(d) of the Customs Act. At an appellate stage the Collector (Appeals) though set aside the order passed by the Assistant Collector, granted liberty to the Department to re-adjudicate the case after issuing proper show cause notice. Fresh notice was issued on 16.4.1994 why the goods should not be confiscated and customs duty amounting to Rs.5,07,274/- be not levied in terms of section 28(1) of the Customs Act. Such notice was questioned on the ground of jurisdiction of the Collector of Customs (Preventive). It was in this background that the Supreme Court rendered its decision holding that only such Customs Officer who has been assigned the specific functions of assessment and re-assessment of duty either by the Board or the Commissioner of the Customs in terms of section 2(34) in the jurisdictional area where the import concerned has been effected, who is competent to issue notice under section 28.
22. Perhaps since the decision of the Supreme Court in the case of Sayed Ali (supra) would upset large number of pending or even concluded proceedings, the Legislature introduced sub-section(11) to section 28, which provides as under:-
- “(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section(1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.”
23. In the circular dated 23.9.2011 the Board in connection with newly added sub-section(11) of section 28 clarified as under:-
2. Further, as a prospective remedial measure, in terms of Section



2(34) of the Customs Act, 1962, the Board issued notification NO.44/2011-Customs(N.T), dated 06.07.2011. By virtue of this notification, officers of Directorate General of Revenue Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the said Act.

4. Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

5. In this regard it may also be noted that in terms of notification No.44/2011-Customs (N.T.) dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28. However, it is hereby directed by the Board that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there shall be no change in the present practice and officers of DRI and DGCEI shall not adjudicate the Show Cause Notices issued under Section 28 of the said Act."

24. It can be straightaway seen from sub-section (11) of Section 28 of the Board notification dated 23.9.2011 that sub-section(11) would operate notwithstanding anything contrary to the judgment, decree or order of any Court and all persons appointed as officers of the Customs under sub-section(1) of section 4 before the 6th day of July, 2011 would be deemed to have always had the power of assessment under section 17 and should be deemed and always should be considered as proper officers for the purpose of the said section.
25. In the context of the inquiry, whether the respondent No.1 can be stated to be a proper officer we may refer to the different notifications of CBEC placed for our consideration.
26. Notification dated 7.7.1997 provided as under:- "...In exercise of the powers conferred by sub- section(1) of section 4 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) NO.38/63-Customs, dated 1st February, 1963 the Central Government hereby appoints the following persons to be the Officers of Customs, namely:-
  1. Appraisers, Examiners, Superintendent Customs (Preventive),

Preventive Officers, Women Searchers, Ministerial Officers and Class IV Officers in the Customs Department in any place in India.

2. Superintendents, Inspectors, Women Searchers, Ministerial staff and Class IV staff of Central Excise Department, who are for the time being posted to a Customs port, Customs airport, Land-Customs station, Coastal post, Customs Preventive post, Customs Intelligence post or a Customs warehouse.
  3. Superintendents, and Inspectors of Central Excise Department in any place in India.
  4. All Officers of the Directorate of Revenue Intelligence.
  5. All Officers of the Narcotics Control Bureau.
  6. All Intelligence Officers of the Central Economic Intelligence Bureau."
27. Undernotification dated 7.3.2002, the Government of India appointed officers mentioned in column No.2 of the table. Notification dated 7.3.2002 provided as under:-

" S.O.(E).-In exercise of the powers conferred by sub-section(34) of section 2 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby assigns the functions of the proper officer to the following officers mentioned in column(2) of the Table below, for the purposes of section 17 and section 28 of the said

Act, namely:-

| Sr. No. | Designation of the Officers   |
|---------|---|
| 1       | 2   |
| 1       | Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence.                      |
| 2       | Commissioners of Customs (Preventive), Additional Commissioners or Joint Commissioners of Customs (Preventive), Deputy Commissioners or Assistant Commissioners of Customs (Preventive) |
| 3       | Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Central Excise Intelligence.               |
| 4       | Commissioners of Central Excise, Additional Commissioners or Joint Commissioners of Central Excise, Deputy Commissioners or Assistant Commissioners of Central Excise.                  |

[F.No.437/143/2009-Cus.IV]

(Vikas)

Under Secretary to the Government of India”

28. Notification dated 6.7.2011 provides as under: -

“ S.O (E ) - In exercise of powers conferred by sub-section(34) of section 2 of the Customs Act, 1962(52 of 1962), the Central Board of Excise and Customs hereby assigns the functions of the proper officer to the following officers mentioned in column(2) of the Table below, for the purposes of section 17 and section 28 of the said Act, namely:-

Table

| Sr. No. | Designation of the Officers   |
|---------|---|
| 1       | 2   |
| 1       | Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence.                      |
| 2       | Commissioners of Customs (Preventive), Additional Commissioners or Joint Commissioners of Customs (Preventive), Deputy Commissioners or Assistant Commissioners of Customs (Preventive) |
| 3       | Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Central Excise Intelligence.               |
| 4       | Commissioners of Central Excise, Additional Commissioners or Joint Commissioners of Central Excise, Deputy Commissioners or Assistant Commissioners of Central Excise.                  |

[F.No.437/143/2009-Cus.IV]

(Vikas)

Under Secretary to the Government of India”

29. Under the notification dated 2.5.2012 the Central Board of Excise and Customs assigned various officers mentioned in Column No.2 of the Table corresponding functions mentioned in column No.3 thereof. Relevant portion of the Table reads as under:-

| Sr. No. | Designation of the Officers   | Functions under No. section of the Customs Act, 1962  |
|---------|---|---|
| ***     | ***   |   |
| 4       | Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence | (i) Section 28B;<br>(ii) Section 72.  |
| ***     | ***   |   |
| 6       | Intelligence Officer in the Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence                    | (i)Section 37;<br>(ii)Section 100;<br>(iii)Section 103;<br>(iv)Section 106;<br>(v)Section 106A;<br>(vi) Sub- sections(1) and (3) of section 110;<br>(viii)Section 144; and<br>(ix) Section 145. |
| ***     | ***   |   |

30. We agree with the counsel for the petitioners that under notification dated 2.5.2012, the officers of DRI have not been assigned specific function of adjudication under section 28 of the Customs Act. So much is amply clear from the portion of the notification reproduced hereinabove. The question, however, is whether by virtue of the notifications dated 7.7.1997, 7.3.2002 and 6.7.2011, the DRI would have the authority to act under section 28 of the Customs Act and whether by virtue of the judgment of the Supreme Court in the case of Sayed Ali (Supra), this position would be altered. As we have already noticed in the notification dated 7.7.1997, all the officers of the Directorate of Revenue Intelligence are appointed as the officers of the Customs. Under the notification dated 7.3.2002, the officers of DRI have been given jurisdiction over the whole of India. Most significant notification is one of 6.7.2011. As noted , the notification,

for the purpose of section 2(34) of the Customs Act, assigns functions of the proper officer to the various officers including those under the Directorate of Revenue Intelligence, such as Additional Director, Joint Director, Deputy Directors and Assistant Directors for the purposes of sections 17 and 28 of the Customs Act.

31. We may recall, in the present case that the show cause notice was issued on 24.1.2013, that is, after the notification dated 6.7.2011. To our mind, therefore, respondent No.1 had the jurisdiction to issue show cause notice. The show cause notice under sub-section (1) of section 28 could be issued by a proper officer. A proper officer is one, who is defined in section 2(34) as the officer of Customs, either by the Board or by the Commissioner of Customs, who is assigned specific functions. Under notification dated 6.7.2011, Joint Director of Revenue Intelligence is assigned the function for the purpose of sections 17 and 28 of the Customs Act by a specific reference to sub-section 2(34) of the Act.
32. In that view of the matter by the settled position, we cannot hold that respondent No.1 lacked the jurisdiction to issue a show cause notice. Had this notification not been issued, the question perhaps would be whether under sub-section(11) of section 28 despite the decision of the Supreme Court in the case of Sayed Ali (supra), the respondent No.1 could be considered as a proper officer for the purpose of section 28. However, it is not necessary for us to examine such question since in our opinion notification dated 6.7.2011 is specific and assigns functions under sections 17 and 28 to such officer. He is, therefore, the proper officer in terms of section 2(34) of the Act. Subsequent notification dated 2.5.2012 would not change this position. This is only a further notification assigning further functions to various officers including those under the Directorate of Revenue Intelligence, functions specified in column No.3 thereof. This notification is not in supersession of the earlier notification dated 6.7.2011. Both notifications, therefore, co-exist. In other words, notification dated 2.5.2012 has not rescinded the earlier notification. Assignment of the functions, under both notifications, therefore, must operate simultaneously. When we hold that under notification dated 6.7.2011 respondent No.1 was assigned the functions under sections 17 and 28 of the Act, his action of issuing show cause notice after the said date in particular cannot be seen as one without jurisdiction. We have noticed that in the clarification issued by CBEC on 23.9.2011 it is specified that these officers "DRI and Preventive Wing" would continue the practice of not adjudicating the show cause notice issued under section 28 of the Act. It was perhaps because of this that having issued show cause notice, the said authority placed the

adjudication proceedings before the competent Customs officer at Mumbai for adjudication.

33. Before concluding, we may notice that the Bombay High Court in the case of Commissioner of Customs (Import) vs. Electron Textile Exports (P) Limited and another dated 14.6.2006 confirmed the view of the Special Bench of the Tribunal. In case of Konia Trading Co. vs. Commissioner of Customs, Jaipur reported in 2004 (170) E.L.T. 51, the Tribunal had held that the DRI authorities would have jurisdiction to issue show cause notice and also adjudicate the proceedings under section 28. However, much water has flown since then, in particular, the decision of the Supreme Court in the case of Sayed Ali(supra) and the subsequent statutory amendments and notifications of the Government have materially changed the situation. We have, therefore, not based our reasonings on such judgment but adopted an independent logic. With respect to the rest of the prayers, the same in our opinion must be allowed to follow adjudication proceedings and subject to outcome thereof. The petitioners had been subjected to certain conditions for provisional release of the goods. At this stage when the conditions were imposed sometime in February, 2012 and the goods were also released, we would not alter such conditions. We would permit the Department to proceed further and conclude the show cause notice proceedings. Subject to the outcome thereof, the deposit, security and bank guarantee of the petitioners be governed. 34. The petitioners have not filed reply to the notice so far. They would have time upto 15.3.2014 to file reply to the show cause notice.
35. We do see a point in contention of the petitioners that the competent authority should finalize the assessment without any further delay. Only thereafter the question of short-levy or non-levy of the duty would arise. The competent authority may take appropriate steps in this regard expeditiously.
36. Subject to above observations, petition is dismissed. Rule is discharged. Interim relief stands vacated.