

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**W.P. No. 3336(W) of 2018
Navneet Kumar**

Vs.

Union of India & Ors.

with

**W.P. No. 3337(W) of 2018
with**

**W.P. No. 3338(W) of 2018
with**

**W.P. No. 3339(W) of 2018
with**

**W.P. No. 3340(W) of 2018
with**

**W.P. No. 3341(W) of 2018
with**

**W.P. No. 3342(W) of 2018
with**

**W.P. No. 3343(W) of 2018
with**

**W.P. No. 3344(W) of 2018
with**

**W.P. No. 3345(W) of 2018
with**

**W.P. No. 3346(W) of 2018
with**

**W.P. No. 3347(W) of 2018
with**

W.P. No. 3348(W) of 2018

For the Petitioner : Mr. Saktinath Mukherjee, Sr. Advocate
Mr. M.M. Verma, Advocate
Mr. Rajnish Kalawatia, Advocate
Mr. Soumya Ray, Advocate

For the Respondents : Mr. Amitabrata Roy, Advocate

Mr. Bhaskar Prosad Banerjee, Advocate

For D.R.I. : Mr. Kaushik Dey, Advocate

Hearing concluded on : June 6, 2018

Judgment on : July 10, 2018

DEBANGSU BASAK, J.:-

Thirteen several writ petitions are taken up for analogous hearing as they involve the same issues. The facts of W.P. No. 3336(W) of 2018 are alluded to for the purpose of convenience.

The petitioner assails a notice to show cause dated December 2, 2017 issued by the Additional Director General, Directorate of Revenue Intelligence, Kolkata invoking Section 124 of the Customs Act, 1962 on the ground of lack of jurisdiction to do so.

Learned Senior Advocate appearing for the petitioner submits that, an Additional Director General of the Directorate of Revenue Intelligence has no jurisdiction to invoke the provisions of Section 124 of the Customs Act, 1962. He submits that, a notice to show cause can be issued under Section 124 of the Act of 1962 by the persons named in Section 122 of the Act of 1962, and at best, by the delegates, if so delegated with such powers, under Section 152 of the

Act of 1962. He contends that, an Additional Director General of Directorate of Revenue Intelligence is not a person contemplated under the Act of 1962 to proceed under the provisions of Section 124 of the Act of 1962. He refers to Section 2 of the Customs Act and in particular to Sub-section (1) and Sub-section (34) thereof. He submits that, the adjudicating authority is defined in Section 2(1) of the Act of 1962. Proper officer is defined in Section 2(34) of the Act of 1962. The appointment of officers of Customs is provided in Section 4 of the Act of 1962. Section 5 of the Act of 1962 defines the power officers of Customs. Section 6 allows entrustment of functions of the Board or officers of Customs on certain other officers of the Central Government or State Government or Local Authority. He contends that, there is a distinction between the exercise of power of a Customs officer and the functions of such officer. According to him, such distinction is apparent in the statute itself. The functions of a Customs officer can be entrusted upon any officer of Central Government or State Government or Local Authority in terms of Section 6 of the Act of 1962. The powers of the Customs officers cannot be delegated save and except to the extent as recognized and permitted under Section 152 of the Act of 1962. An Additional Director General of the

Directorate of Revenue Intelligence is not a person who falls within the category of posts designated under Section 152 or under Section 122 of the Act of 1962. Consequently, he has no authority to issue the impugned show cause notice.

Referring to Chapter V of the Act of 1962, learned Senior Advocate for the petitioner submits that, such Chapter deals with levy of, and exemption from Customs duties. He relies upon Sections 17 and 28 thereof and submits that, the function of a Customs officer and recovery of duties as enumerated under Sections 17 and 28, can be entrusted upon any officer of the Central or State or Local Authority in terms of Section 6 of the Act of 1962. Chapter XIV deals with confiscation of goods and conveyance and imposition of penalties. It is a separate Chapter. Sections 112, 122, 124 and 152 are under Chapter XIV. The powers to be exercised by Customs officers under the provisions of Sections 122 and 124 cannot be delegated. He relies upon **2011 Volume 3 Supreme Court Cases 537 (Commissioner of Customs v. Sayed Ali & Anr.)** submits that, when the show-cause notice has not been issued by a proper officer within the meaning of the Customs Act, 1962, such show-cause notice is non est. He relies

upon **1989 Volume 4 Supreme Court Cases page 99 (Ramlal Khurana (Dead) By L. Rs v. State of Punjab & Ors.)** and submits that, one officer cannot hold two substantive posts. Referring to **1978 Lab IC page 41 (T.R. Pandey v. The Chief Commissioner, Andaman and Nicobar Islands and Ors.)** he submits that, a person officiating at a post cannot discharge the powers to be exercised by the post holder. According to him, since the impugned show-cause notice suffers from the vice of lack of jurisdiction, the same should be quashed as against the petitioner.

Learned Advocate appearing for the Directorate of Revenue Intelligence submits that, all officers of the Directorate of Revenue Intelligence are treated as officers of Customs. In support of such contention, he relies upon four notifications issued by the Central Government. Relying upon the notification No. 31/97-Cus. (N.T.) dated July 7, 1997 learned Advocate appearing for the Directorate of Revenue Intelligence submits that, the petitioner falls within the ambit of a person who can issue a notice to show cause under the provisions of the Customs Act, 1962. He refers to Section 112 of the Act of 1962 and submits that, penalty can be imposed on any person. In the facts

of the present case, the petitioner has been asked to show-cause as to why penalty should not be imposed against him. He refers to Section 122 of the Act of 1962 and submits that, such a section contemplates that, a proceeding can be initiated against any person who is liable to pay a penalty. Section 124 of the Act of 1962 requires such person who has been given a notice to be informed in writing about the grounds on which it is proposed to impose the penalty, afford an opportunity of making a representation in writing and give such person a reasonable opportunity of being heard. The Directorate of Revenue Intelligence is entrusted with the job of the investigating revenue frauds. Upon the Directorate of Revenue Intelligence receiving intelligence, it proceeds to investigate. In the present case, on investigation the Directorate of Revenue Intelligence had found the involvement of the petitioner requiring an adjudication so as to impose a penalty, if found guilty. It is the practice that, the person investigating the matter issue, the show-cause notice, in terms of the four notifications of the Central Government. The notice is adjudicated upon by the persons named in Section 122 of the Act 1962. By following such process, the authorities adhere to the principles of natural justice as a person cannot be a judge of its own cause. The

person who issued the show-cause notice does not hear the show-cause reply or adjudicate therein. The show-cause notice is adjudicated upon by the person named in Section 122 of the Act of 1962. Referring to Section 122A of the Act of 1962, learned Advocate for the Directorate of Revenue Intelligence submits that, the adjudication procedure is prescribed therein. Learned Advocate appearing for the Directorate of Revenue Intelligence relies upon **2015 (318) ELT page 245 (Abhishek Mundhra v. A.D.G., D.G. of Revenue Intelligence, Chennai)** and submits that, the Madras High Court has held that, an officer of Directorate of Revenue Intelligence is competent to invoke the provisions of Section 124 of the Customs Act, 1962. He submits that, the Gujarat High Court in **2014 Volume 2 ECS page 122 (Swati Menthol and Allied Chemicals Ltd. v. Joint Director-Directorate of Revenue Intelligence)** has held that, all officers of the Directorate of Revenue Intelligence are appointed as officers of the Customs. An officer of the Customs is amenable to a proceeding under Section 124 of the Act of 1962, and in support of such contention, learned Advocate for the Directorate of Revenue Intelligence relies upon a judgment and order dated February 7, 2018 passed in **W.P. No. 715 of 2015 (Vikash Kumar v. Directorate of Revenue**

Intelligence & Ors.). He relies upon **1996 Volume 10 Supreme Court Cases page 520 (Union of India & Ors. v. Jain Sudh Vanaspati Ltd. & Anr.)** and submits that, the noticee in a proceeding under Section 124 has an opportunity to make a written representation, and to be heard before passing of the final order. Therefore, there is no prejudice caused to such noticee. Consequently, he submits that, the writ petition should be dismissed.

Although the parties wanted to canvass other points, the contentions of the parties were limited to the question of lack of jurisdiction of the Additional Director of Directorate of Revenue Intelligence to invoke the provisions of Section 124 of the Customs Act, 1962. The issue, therefore, that falls for consideration in the writ petitions is whether the Additional Director of Directorate of Revenue Intelligence has the jurisdiction to invoke Section 124 of the Act of 1962 or not.

It appears from the impugned show-cause notice dated December 2, 2017 that, the Directorate of Revenue Intelligence, Kolkata Zonal Unit, Kolkata, received specific information with regard to merit of different contraband and high value items. An investigation was

carried out by the Directorate of Revenue Intelligence with regard thereto. On investigation the Directorate of Revenue Intelligence found that, 12 importers were involved in misdeclaration of the consignment imported by them. On completion of the investigation, Directorate of Revenue Intelligence initiated proceedings under Section 124 of the Customs Act, 1962 against the persons involved. The writ petitioner, according to the Directorate of Revenue Intelligence, is one of the persons involved in such transactions and is required to be proceeded against, under Section 124 of the Customs Act, 1962. The Directorate of Revenue Intelligence had issued separate show-cause notices to the 12 importers involved apart from the petitioner. As noted above, the impugned notice has been issued by the Additional Director of the Directorate of Revenue Intelligence. Appointment of Customs Officer is governed by Section 4 of the Customs Act, 1962. Section 2(34) of the Act of 1962 defines a proper officer under the Act of 1962. The impugned show-cause notice requires the petitioner to reply thereto and be heard by the Principal Commissioner of Customs. The impugned show-cause notice has invoked Section 124 of the Act of 1962. For the purpose of appreciating the rival contentions, it would be appropriate to set out the relevant provisions of the Customs Act,

1962 alluded to by the rival parties in the course of their submissions.

They are as follows:-

“2. Definitions. — In this Act, unless the context otherwise requires,—

(1) “adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;

(1A) “aircraft” has the same meaning in the Aircraft Act, 1934 (22 of 1934);

(1B) “Appellate Tribunal” means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129;

.....
(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;”

“4. Appointment of officers of customs.—

(1) The Board may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), Board may authorise a Chief Commissioner of Customs or a Joint or Assistant or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.”

“5. Powers of officers of customs.—

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.”

“6. Entrustment of functions of Board and customs officers on certain other officers.— *The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.”*

“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 216 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, to a penalty 217 [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

(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 219 [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 220 [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 221 [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.”

“122. Adjudication of confiscations and penalties.— In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged,—

(a) without limit, by a Principal Commissioner of Customs or a Deputy Commissioner of Customs;

(b) where the value of goods liable to confiscation does not exceed two lakh rupees, by an Assistant Commissioner of Customs or Deputy Commissioner of Customs;

(c) where the value of the goods liable to confiscation does not exceed ten thousand rupees, by a gazetted officer of customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs.”

“124. Issue of show cause notice before confiscation of goods, etc.— No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in 1 [writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral.”

“152. Delegation of powers.— *The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—*

(a) any power exercisable by the Board under this Act shall be exercisable also by a Chief Commissioner of Customs or a Commissioner of Customs empowered in this behalf by the Central Government;

(b) any power exercisable by a Commissioner of Customs under this Act may be exercisable also by a Joint Commissioner of Customs or an Assistant Commissioner of Customs or Deputy Commissioner of Customs empowered in this behalf by the Central Government;

(c) any power exercisable by a Joint Commissioner of Customs under this Act may be exercisable also by an Assistant Commissioner of Customs or Deputy Commissioner of Customs] empowered in this behalf by the Central Government;

(d) any power exercisable by an Assistant Commissioner of Customs or Deputy Commissioner of Customs under this Act may be exercisable also by a gazetted officer of customs empowered in this behalf by the Board.”

The Directorate of Revenue Intelligence relies upon four notifications issued by the Central Government, in support of their

contentions that, they have powers to issue a show-cause notice under Section 124 of the Act of 1962. They are as follows:-

Government of India
Ministry of Finance
(Department of Revenue)
Notification No.31/97- Customs (N.T.)

New Delhi, dated
the 7th July, 1997.

Appointment of Appraisers, Examiners, Superintendents, Inspectors, Preventive Officers, Women Searchers, Ministerial Officers and Class IV officers in the Customs Department in any place in India. Officers of DRI, Narcotics Control Bureau and EIB appointed as "Officers of Customs". - 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 or Central Excise Department, who are for the time being posted to a Customs port, Customs airport, Land-Customs station, Coastal Port, 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 Assistant Directors of the Central Economic Intelligence Bureau.

[Notification No. 31/97-Cus. (N.T.), dated 7-7-1997 as amended by Notification No. 18/2017-Cus. (N.T.), dated 3-3-2017.]

Government of India

Ministry of Finance
(Department of Revenue)

Notification No.17/2002- Customs (N.T.)

New Delhi, dated
the 7th March, 2002.

Appointment of D.R.I. officials as Customs Officers - In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962) and in suppression of notification of the Government of India in the Ministry of finance (Department of Revenue) No. 19/90-Customs (N.T.), dated the 26th April, 1990, the Central Government appoints the officers mentioned in Column (2) of the Table below to be the [Principal Commissioner of Customs or Commissioner of Customs], the officers mentioned in column (3) thereof to be the Additional commissioners or Joint commissioners of Customs and Officers mentioned in column (4) thereof to be the Deputy Commissioners or Assistant commissioners of Customs for the areas mentioned in the corresponding entry in column (1) of the said Table with effect from the date to be notified by the Central Government in the Official Gazette:-

TABLE

Area of Jurisdiction	Designation of the officers		
(1)	(2)	(3)	(4)
Whole of India	Principal Director General, or Additional Director General, Directorate of Revenue Intelligence posted at Headquarters and Zonal/regional unit	Additional Directors, or Joint Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/ regional units.	Deputy Directors, or Assistant Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/ regional units.

[Notification No. 17/2002-Cus. (N.T.), dated 7-3-2002 as amended by Notification No. 82/2014-Cus. (N.T.), dated 16-9-2014.]

F. No. 437/9/98-Cus.IV

Dated 15/2/1999

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Issuance of Show Cause Notice by the Officers of Directorate of Revenue Intelligence - regarding -

A doubt has been recently raised as to whether the Officers of Directorate of Revenue Intelligence could issue show cause notices in cases investigated by them - a practice started last year apparently in tune with the practice of the Directorate General of Anti Evasion. The matter has been examined in the Board.

2. It has been observed that in terms of Customs Notification No. 19/90-Cus. (N.T.), dated 26.4.90, as amended from time to time, the Officers of Directorate of Revenue Intelligence of different categories have been notified and appointed as Commissioners of Customs, Deputy Commissioners of Customs or Assistant Commissioners of Customs for the area specified. These officers, therefore, can legally be entrusted with discharge of functions normally performed by Commissioners Deputy Commissioners or Assistant Commissioners of Customs in their jurisdiction, as the case may be. Board cannot doubt subject these powers/functions to certain restrictions/limitations as may be imposed, as provided under section 5(1) of the Customs Act.

3. Directorate of Revenue Intelligence Officer are, therefore, to undertake investigations of cases detected by them and to issue the Show Cause Notices on completion of investigations. In line with the instructions issued (vide F.No. 208/23/97-CX-8, dated 20.1.98) in respect of Officers or Directorate General Anti Evasion, Board has decided that in impact of cases investigated by the Directorate General of Revenue Intelligence, the officers of said Directorate will be competent to and may issue show case notices in cases investigated by them - though these will continue to be adjudicated by the concerned jurisdictional Commissioners, Additional Commissioners, Deputy Commissioners or Assistant Commissioners of Customs, as the case may be.

4. The Board has also decided that these instructions may kindly be brought to the notice of all departmental officers by issuing suitable standing orders.

Sd/-
(Rajendra Singh)
Under Secretary to the Government of India

Government of India
Ministry of Finance
(Department of Revenue)

Notification No.40/2012-Customs (N.T.)

New Delhi, dated the 2nd May,

2012.

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 officers and above the rank of officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Customs Act, 1962, given in the corresponding entry in Column (3) of the said Table:-

Table

Sl. No.	Designation of the officers	Functions under Section of the Customs Act, 1962
(1)	(2)	(3)
1.	Commissioner of Customs.	(i) Section 33.
2.	Additional Commissioner or Joint Commissioner of Customs.	(i) Sub-section (5) of section 46; and (ii) Section 149.
3.	Deputy Commissioner or Assistant Commissioner of Customs and Central Excise	(i) Sub-section (5) of section 17; (ii) Section 18; (iii) Section 21; (iv) Section 22; (v) Section 26A; (vi) Section 28; (vii) Section 28B; (viii) Section 28BA; (ix) Section 30;

32;

(x) Sub-section (2) of section 31;

(xi) Section

(xii) Proviso to section 34;

(xiii) Section 35;

(xiv) Section 42;

(xv) Sub-section (3) of section 45;

(xvi) Second Proviso to sub-section (1) of section and sub-section (2) of section 46;

(xvii) Section 48;

(xviii) Sub-section (3) of section 54;

(xix) Section 59;

(xx) Section 60;

(xxi) Section 61;

(xxii) Section 63;

(xxiii) Clause (f) of section 64;

(xxiv) Section 67;

(xxv) Section 72;

(xxvi) Section 73;

(xxvii) Section 80;

(xxviii) Section 85;

(xxix) Section 89;

(xxx) Section 97;

(xxxi) Sub-section (1A) of section 110

(xxxii) Section 129A;

(xxxiii) Section 129DD;
(xxxiv) Section 129E;
(xxxv) Section 130D; and
(xxxvi) Section 142.

4. Deputy Director or Assistant Director in the Directorate and
General of Revenue Intelligence and Directorate General
of Central Excise Intelligence. (i) Section 28B;
(ii) Section 72.

5. Superintendent of Customs and Central Excise or Appraiser (i) Section 13;
(ii) Section 14;
(iii) Sub-sections (2), (3), (4) and (6) of section 17;
(iv) Section 19;
(v) Section 40;
(vi) Section 41;
(vii) Clause (b) of sub-section (2) of section 45;
(viii) Sub-sections (1) and (4) of section 46;
(ix) Section 47;
(x) Section 50;
(xi) Section 51;
(xii) Section 54;
(xiii) Section 62;
(xiv) Clause (a) to (e) of section 64;
(xv) Section 68;
(xvi) Section 69;

(xvii) Section 79;
(xviii) Section 83;
(xix) Section 86;
(xx) Section 92; and
(xxi) Section 93.

6. Intelligence Officer in the Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence. Section 103;
- (i) Section 37;
(ii) Section
(iii)
(iv) Section 106;
(v) Section 106A;
(vi) Sub-sections (1) and (3) of section 110;
(vii) Section 144; and
(ix) Section 145.
7. Inspector of Customs and Central or Preventive Officer or Examining Officer. Excise
- (i) Sub-section (1) of section 31;
(ii) Section 34 excluding proviso to the section;
(iii) Section 37;
(iv) Section 38;
(v) Section 39;
(vi) Clause (a) of sub-section (2) of section 45;
(vii) Section 77;

- (viii) Section 94;
- (ix) Section 95;
- (x) Section 100;
- (xi) Section 103;
- (xii) Section 106;
- (xiii) Section 106A;
- (xiv) Sub-sections (1) and (3) of section 110;
- (xv) Section 144; and
- (xvi) Section 145.

[F.No. 437/1/2011-Dir (Cus)]

(Vikas)

Under Secretary to the Government of India

The person issuing the impugned show-cause notice is the Additional Director of the Directorate of Revenue Intelligence. He is an Officer of an organisation other than Customs. His original appointment is not under Section 4 of the Customs Act, 1962. However, he claims that, he is entitled to discharge the functions of a Customs officer by virtue of the four several notifications issued by the Central Government exercising powers under the Customs Act, 1962. The first notification is dated July 7, 1997 bearing No. 31/97- Cus. (N.T.) as amended by the Notification No. 18/2017- Cus. (N.T.) dated

March 3, 2017. By such notification, the Central Government has appointed all officers of the Directorate of Revenue Intelligence to be officers of Customs. The second notification bearing No. 17/2002 – Cus. (N.T.) dated March 7, 2002 as amended by the Notification No. 82/2014 – Cus. (N.T.) dated September 16, 2014 has appointed the officers mentioned in Column (2) of the Table to be the Principal Commissioner of Customs or Commissioner of Customs and the officers mentioned in Column (3) thereof to be Additional Commissioner or Joint Commissioner of Customs and officers mentioned in Column (4) thereof to be Deputy Commissioner or Assistant Commissioner of Customs for the areas mentioned in the corresponding entry in Column (1) of the Table. The third notification being a circular bearing No. 4/99 – Cus. (N.T.) dated February 15, 1999 is of the view that, the officers of Directorate of Revenue Intelligence of different categories have been notified and appointed as Commissioner of Customs, Deputy Commissioner of Customs or Assistant Commissioner of Customs. These officers, therefore, are legally entrusted to discharge functions normally performed by Commissioner, Deputy Commissioner or Assistant Commissioner of Customs in their jurisdiction as the case may be. It empowers the

officers of the Directorate of Revenue Intelligence to undertake investigation on cases detected by them, and to issue show-cause notices on completion of the investigations. The fourth notification bearing No. 40/2012 – Cus. (N.T.) dated May 2, 2012 delineates the functions under the various sections of the Customs Act, 1962 that may be discharged by the officers of the Directorate of Revenue Intelligence as specified therein.

Section 2(34) of the Act of 1962 defines a proper officer. A proper officer, in relation to any function to be performed under the Act of 1962 means the officer of Customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs. Section 4 of the Act of 1962 empowers the Board to appoint persons as officers of Customs. It allows the Board to authorize a Principle Chief Commissioner or Chief Commissioner of Customs or a Joint or Assistant or Deputy Commissioner of Customs to appoint officers of Customs below the rank of Assistant Commissioner of Customs. Section 6 of the Act of 1962 allows the Central Government to entrust the functions of the Board or any officer of the Customs on any officer of the Central or State

Government or a local authority, either conditionally or unconditionally. Section 152 of the Act of 1962 allows the Central Government to delegate the powers exercisable by the Board, Commissioner of Customs, Joint or Assistant Commissioner of Customs on the persons specified therein. Who is a proper officer was considered in **Sayed Ali & Anr. (supra)**. It has held as follows:-

“114. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that 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 affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act.

Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose in as much as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions.

Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, in as much as all officers of customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers". In our view therefore, it is only the officers of customs, who are assigned the functions of assessment, which of course, would include re- assessment, working under the jurisdictional Collectorate within whose jurisdiction the 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.”

The last of the notifications relied upon at the behest of the respondents is dated May 2, 2012. It is a notification bearing No. 40/2012 and is issued in exercise of powers conferred by Section 2(34) of the Act of 1962. It does not authorize an Additional Director General, Directorate of Revenue Intelligence to discharge the functions under Section 124 of the Act of 1962. Section 2(34) of the Act of 1962 mandates that, an officer of the Customs must be duly authorised, either by the Board or the Commissioner of Customs to discharge a function under the Act of 1962. In absence of such authorization by the Board or the Commissioner of Customs under the Act of 1962, no officer can discharge any function under the Act of 1962 which he is not authorised to discharge. An appointee under Section 4 of the Act of 1962 requires an authorization under Section 2(34) to be considered as proper officer to discharge the functions of a Customs Officer. An employee other than of Customs, entrusted with the discharge of functions under the Act of 1962 would also require an authorization under Section 2(34) to be considered as a proper officer entitled to discharge functions under the Act of 1962. The notification No. 31/97-Customs (N.T.) dated July 7, 1997 and notification No. 17/2002,

Customs (N.T.) dated March 7, 2002 are exercise of powers under Section 4 of the Act of 1962. It is not an exercise of power under Section 2(34) of the Act of 1962. Therefore, the personnel of Directorate of Revenue Intelligence named in such notifications have not been authorised to discharge any functions under the Act of 1962 by a conferment of authorization by the Board or the Commissioner of Customs exercising powers under Section 2(34) of the Act of 1962. The circular No. 4/99-Cus. dated February 15, 1999 is also not an exercise of powers under Section 2(34) of the Act of 1962. The Circular bearing No. 4/99-Cus. dated February 15, 1999 says that, officers of Directorate of Revenue Intelligence are competent and may issue show-cause notice in cases investigated by them. Although it does allow various officials of the Directorate of Revenue Intelligence to exercise various functions under other statutory provisions of the Act of 1962 since it is not an exercise of powers under Section 2(34) of the Act of 1962, the officers noted therein cannot be treated as proper officers within the meaning of the Customs Act, 1962 on the strength of such circular.

There is no notification on record authorizing an Additional Director of Directorate of Revenue Intelligence, under Section 2(34) of the Act of 1962 to discharge the functions of a proper officer under Section 124 of the Act of 1962. An authorization under Section 2(34) of the Act of 1962 is sine quo non for any officer of Customs or any officer entrusted under Section 6 of the Act of 1962. As the scheme of the Act of 1962 stands, an officer of Customs has to be authorised under Section 2(34) of the Act of 1962 to discharge the functions entrusted. An officer other than a Customs officer, entrusted under Section 6 of the Act of 1962, needs an authorization under Section 2(34) to be considered as proper officer authorized to discharge the functions of a Customs officer under the Act of 1962.

The Notification No. 40/2012-Customs (N.T.) dated May 2, 2012 entrusts discharge of functions under provisions of the Act of 1962 to various officers of Directorate of Revenue Intelligence. It is in exercise under Section 2(34) of the Act of 1962. Therefore, the designated officers are proper officers. Such officers, in course of discharge of functions entrusted under Section 2(34) may come across materials requiring initiation of proceedings under Section 124 of the Act of

1962. Unless such officer is entrusted to invoke Section 124 by an appropriate order under Section 2(34), he cannot do so by saying that in discharge of functions entrusted to him under Section 2(34) he has come across materials requiring a proceeding under Section 124. Any other interpretation would render under Section 2(34) otiose.

Ramlal Khurana (supra) has held that, no Government servant can have simultaneously hold two liens against two posts in two different cadres. **T.R. Pandey (supra)** has held that, if the order of the punishing authority is without jurisdiction, the same cannot be ratified in appeal. The initial order being bad, the same cannot be cured on appeal. **Abhishek Mundhra (supra)** did not consider the notification issued under Section 2(34) of the Act of 1962 dated May 2, 2012. It concerns discharge of functions of an officer of Directorate of Revenue Intelligence under Section 28 of the Act of 1962. In such context it holds that, an officer of Directorate of Revenue Intelligence is entitled to discharge functions under Section 28 of the Act of 1962. With respect, all officer of Directorate of Revenue Intelligence will not have powers under Section 28 but those officers who are empowered by the Customs Notification No. 40/2012-Customs (N.T.) dated May 2,

2012. **Swati Menthol and Allied Chemicals Ltd. (supra)** has held that, officers of Directorate of Revenue Intelligence have powers for the purpose of Sections 17 and 28 of the Act of 1962. Again, with respect, such a view may not be correct in view of the notification dated May 2, 2012.

Vikash Kumar (supra) is a case where the petitioner questioned invocation of Section 124 of the Customs Act, 1962 against an officer of the Customs Department. The jurisdiction of the person issuing the show-cause notice was not under challenge. Such issue was not raised and the same cannot be said to have been decided in **Vikash Kumar (supra)**. **Jain Sudh Vanaspati Ltd. (supra)** notes that, a show cause notice under Section 124 contemplates that the response of the respondent would be considered and only thereafter would the matter be decided. Existence of a right of hearing by an authority after a response is filed to a show-cause notice is not a cure to an inherent lack of jurisdiction. A court exercising jurisdiction under Article 226 of the Constitution would be well within its parameters should it require to intervene and quash a proceeding, initiated at the instance of a authority who is not vested with the jurisdiction to do so.

Additional Director of Directorate of Revenue Intelligence is not entitled to invoke Section 124 of the Customs Act, 1962.

The impugned show-cause notices are quashed as being without jurisdiction.

W.P. No. 3336 (W) of 2018, W.P. No. 3337 (W) of 2018, W.P. No. 3338 (W) of 2018, W.P. No. 3339 (W) of 2018, W.P. No. 3340 (W) of 2018, W.P. No. 3341 (W) of 2018, W.P. No. 3342 (W) of 2018, W.P. No. 3343 (W) of 2018, W.P. No. 3344 (W) of 2018, W.P. No. 3345 (W) of 2018, W.P. No. 3346 (W) of 2018, W.P. No. 3347 (W) of 2018 and W.P. No. 3348 (W) of 2018 are disposed of accordingly.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

[DEBANGSU BASAK, J.]