

Reserved On : 12/06/2026
Pronounced On : 22/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17436 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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MESSERS VIDRES INDIA CERAMICS PVT. LTD. & ANR.

Versus

UNION OF INDIA & ORS.

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Appearance:

MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2

MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2

VIRAL K SHAH(5210) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr.Paresh M. Dave for the petitioners, learned Senior Standing Counsel Ms.Hetvi Sancheti for the respondent Nos.1 and 2 and learned Senior Standing Counsel Mr.Viral K. Shah for the respondent No.3.

2. **RULE** returnable forthwith. Learned Senior Standing Counsels waives service of notice of Rule for and on behalf of

the respective respondents.

3. By way of present petition, the petitioners herein have prayed for the following reliefs:

“(A) That Your Lordships may be pleased to issue a Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate Writ, Order or Direction thereby Prohibiting the Second Respondent herein completely and permanently from taking into consideration contents and documents referred to in Corrigendum F.No.DRI/AZU/GRU-60/2013 (Vidres India) dated 22.08.2016 (Annexure-F).

(B) Your Lordships may be pleased to issue a Writ of Mandamus or a Writ of Certiorari or any other appropriate Writ, Order or Direction thereby quashing and setting aside Corrigendum dated 22.08.2016 (Annexure – F) along with documents referred to in the Corrigendum, and be further pleased to direct respondent no.2 herein to pass an appropriate adjudication order on show cause notice F No.DRI/AZU/GRU-60/2013 dated 10.04.2014 without taking into consideration the contents and documents of the said Corrigendum dated 22.08.2016.

(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to restrain the respondents, their servants and agents including the Principal Commissioner of Customs, Ahmedabad from taking any actions against the petitioners on the basis of Corrigendum F.No.DRI/AZU/GRU-60/2013 (Vidres India) dated 22.08.2016.

(D) An ex-parte ad-interim relief in terms of Para 8(C) above may kindly be granted;

(E) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted.”

4. **BRIEF FACTS:**

4.1 Between December, 2012 to July, 2013, the petitioner Company has imported several consignments of pigments at Air Cargo Complex, Ahmedabad as well as at Customs House, Nhava Sheva and filed 25 separate Bills of Entry for clearance of the imported goods for home consumption. All the Bills of

Entry have been finally assessed by proper Custom officers classifying imported goods under Sub Heading No.32071090, and custom duties assessed by the officers have been paid by the petitioner Company and goods have been cleared from the Customs area.

4.2 On 06.09.2013, the Directorate of Revenue Intelligence (for short 'DRI') authorities called and recorded a statement of the petitioner's Director (i.e. the petitioner No.2) in respect of the above imports when the Director explained that the materials imported were "Pigments", and not "Printing ink" as was believed by the DRI authorities, and that the method of application of the imported materials was also such that only pigments could be used that way, and not Printing ink.

4.3 On 10.04.2014, a show cause notice has been issued by the DRI authorities proposing to reclassify the materials imported by the petitioner Company in all past cases as "Printing Ink" and not as "Pigments" for charging custom duties at higher rate. In this show cause notice, reports of the Customs Laboratory, Kandla Customs House, and the Central Revenues Control Laboratory (for short 'CRCL'), New Delhi are relied upon for the samples taken by DRI authorities.

4.4 On 10/11.12.2014, the petitioners filed interim reply and explained that the goods were pigments even as per Explanatory Notes of Heading 3207 of the Harmonious System of Nomenclature (HSN) which was the basis for the Customs Tariff, and a request for cross examination of the departmental Chemical Examiner was also made. In a preliminary hearing,

the Principal Commissioner of Customs, Ahmedabad, who is the adjudicating authority. accepted the petitioner's request for cross examination of the Joint Director, Kandla Customs Laboratory.

4.5 On 11.07.2016, a final personal hearing was held before the Principal Commissioner of Customs when the petitioners submitted a note of final submissions. After hearing the petitioners on 11.07.2016 and taking the above note on record, the Principal Commissioner of Customs concluded the hearing and adjudication, for passing final order on the show cause notice.

4.6 On 22.08.2016, after concluding hearing and posting the case for passing orders, a Corrigendum is now served upon the petitioners for adding new paragraphs in the show cause notice with a new allegation that the goods imported by M/s. Krishna Colour Chem of Morbi and the goods imported by the Petitioner Company were one and the same.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

5. Learned advocate, Mr.Paresh M. Dave appearing for the petitioners has submitted that the Corrigendum issued on 22.08.2016 cannot be considered in the adjudicating process since the proceedings were finally concluded on 11.07.2016 and only final order was required to be passed by the Principal Commissioner of Customs. It is submitted that the entire new case is sought to be projected through the Corrigendum by comparing the goods of M/s. Krishna Colour Chem of Morbi

with whom, the petitioners do not have any connection. It is submitted that the Corrigendum always relates to an error in the original order in the form of printing or typing etc. but, does not mean that a new evidence is sought to be relied upon by the authorities against the petitioners or a party, who subjected to proceedings.

6. While referring to the provisions of Section 28 of the Customs Act, 1962 (for short 'the Act') more particularly, sub-section (4), it is submitted that the Proper Officer, within five years from the relevant date, is required to serve notice on the person chargeable with duty or interest and thereafter, under the provisions of sub-section (8) of Section 28 of the Act, a final order determining the amount of duty or interest is required to be passed. While referring to the provisions of sub-section (9) of Section 28 of the Act, it is submitted that the Proper Officer has to actually determined the amount of duty or interest under sub-section (8) of Section 28 of the Act within one year from the date of notice in respect of the cases falling under sub-section (4) of Section 28 of the Act and in the present case, when the proceedings were reserved for passing the final order, the Corrigendum has been issued on the premises of a new evidence unearth from M/s. Krishna Colour Chem, which is impermissible since no provisions under the Act or the Regulations exists permitting the issuance of Corrigendum after the adjudication proceeding is over. Thus, it is urged that the writ petition may be allowed and the respondents may be directed to pass final orders ignoring the impugned Corrigendum dated 22.08.2016.

SUBMISSIONS ON BEHALF OF CUSTOM DEPARTMENT :

7. Opposing the aforementioned submissions and the present writ petition, learned Senior Standing Counsel, Ms.Hetvi H. Sancheti appearing for the respondent department has submitted that the department is empowered to issue Corrigendum in the form of supplementary notice after the amendment of the provisions of Section 28 of the Act. She has referred to the provisions of sub-section (7A), which were introduced in Section 28 with effect from 28.03.2018 by the Finance Act 13 of 2018, which gives an authority to the Proper Officer to issue a supplementary notice under such circumstances and in such manner as may be prescribed. In this context, she has referred to the Customs (Supplementary Notice) Regulations, 2019 [42/2019-Cus.(N.T.)] (for short 'Regulations of 2019') more particularly, Regulation 4(d) which permits to issue supplementary notice in case there is an additional evidence that would have a significant bearing on the outcome of the case.

7.1 Learned Senior Standing Counsel, Ms.Hetvi H. Sancheti has submitted that in the present case during further investigation, when the representative samples were drawn from the stock of "Pigmented Ink" imported by M/s. Krishna Colour Chem, Morbi, from the same entity i.e. Esmalglass Itaca, Spain, and during the course of adjudication proceedings, a new evidence was revealed on the statement dated 07.01.2014 of Shri Bhavesh K. Maniar, partner of M/s. Krishna Colour Chem, Morbi, that the petitioners – M/s. Vidres

India Ceramics Private Limited used to purchase Ceramic Inks from Itaca, Spain, through Vidres, S.A. based in Spain and they used to give their own codes for the said Inks and the evidence which directly related to the proving of complicity of the present petitioners, was introduced through the Corrigendum dated 22.08.2016 and accordingly, in paragraph No.5.1 was proposed to added in the original show cause notice dated 10.04.2014 below paragraph No.5. It is thus submitted that the aforesaid Regulations and sub-section (7A) of Section 28 of the Act permits the issuance of supplementary notice and hence, the Corrigendum cannot be ignored in the adjudicating process.

7.2 She has also referred to the show cause notice dated 10.04.2014 which reserves the authority/department to amend, modify or supplement the notice at any time on the basis of available/further evidences prior to the adjudication of the case. Thus, she has submitted that the Corrigendum issued to the original show cause notice producing the additional evidence is legal as per the statutory provisions hence, she has urged that no directions ignoring the same may be passed by this Court. In support of her submissions, she has placed reliance on the judgment of the Calcutta High Court in the case of Commissioner of Customs (Port.), Kolkata Vs. Sandeep Kumar Dikshit, (2024) 17 Centax 184 (Cal.).

REJOINDER-SUBMISSIONS ON BEHALF OF PETITIONER :

8. In rejoinder to the aforementioned submissions, learned advocate Mr.Paresh M. Dave has pointed out to the extracts of

notes and clauses of Finance Bill, 2018 which introduced the amendments to Sections 28 and 124 of the Act. It is contended that the Regulations introduced vide Notification dated 18.06.2019 prescribing the manner and circumstances for issuance of the supplementary notice, will not apply to the case of the petitioners in view of the Notification dated 27.03.2020 issued by the Ministry of Law and Justice under the Finance Act, 2020. He has pointed out that in Section 28 of the Act, the Explanation-4 was substituted with retrospective effect from 29.03.2018 clarifying that the provisions of the Act or the Rules or Regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to 29.03.2018, which is the date of commencement of the Finance Act, 2018, will be governed by the provisions of Section 28 of the Act as it stood immediately before such date. Thus, it is contended that the reliance placed by the department on the provisions of sub-section (7A) of Section 28 of the Act will not empower the respondents to either issue supplementary notice or any Corrigendum. Thus, it is urged that the petition may be allowed.

ANALYSIS AND OPINION :

9. We have heard the learned advocates appearing for the respective parties at length. The following undisputed facts are established from the record :

9.1 The petitioners are subjected to the proceedings which are initiated vide show cause notice dated 10.04.2014 by

alleging that in respect of 25 separate Bills of Entry under the sub-heading No.32071090, the petitioners have in-fact imported 'Pigments' and not 'Printing Inks' and the custom duty is required to be charged at higher rate. The show cause notice is issued after the investigation has been done by the DRI Authority.

9.2 The petitioners, who responded to the show cause notice vide its reply dated 10/11.12.2014, had also requested cross-examinations of the Departmental Chemical Analyzer since it was a specific case of the petitioners that the samples which were collected, tested and analyzed, were not from their goods but from someone else goods.

9.3 On 10.12.2015, the Joint Director of Customs Laboratory, Kandla, was cross-examined before the Adjudicating Authority i.e. Principal Commissioner of Customs.

9.4 On 15/18.12.2015, cross-examination of one Shri R Dashrathan was done, who confirmed that the only samples tested by him were that of goods imported by M/s. Krishna Colour Chem, Morbi.

9.5 On 11.07.2016, a final personal hearing was held before the Principal Commissioner of Customs and the petitioners submitted their final notes highlighting that there was no report of the Chemical Experts of the goods imported by them and the Test Report pertains to the goods imported by the another party, which cannot be directly applied to the goods imported by them.

9.6. After hearing the petitioners on 11.07.2016, the Principal Commissioner of Customs concluded the hearing and adjudication for passing final order on the show cause notice. A categorical statement has been made by the petitioners in this regard that the final hearing was concluded on 11.07.2016 and the Commissioner of Customs kept the matter for final orders on the show cause notice. This statement made in the writ petition has not been either controverted or denied by the respondents. Thus, the adjudication of the show cause notice got completed on 11.07.2016 and the final orders were required to be passed. However, on 22.08.2016 i.e. almost after a period of more than 1 month, the petitioners were served with the Corrigendum proposing to add new paragraph i.e. paragraph No.5.1 in the show cause notice with a fresh allegation that the goods imported by M/s. Krishna Colour Chem and the goods imported by the petitioner company, were one and the same. Various documents including statements recorded by the DRI Officers are sought to be brought on record as a part of the original show cause notice.

9.7 It is the case of the petitioners before us that after the hearing was completed and the matter was reserved for passing final order, the new evidence with an allegations cannot be introduced by way of Corrigendum as the Corrigendum only pertains to rectification of any error in the form of typing or printing.

10. At this stage, we may refer that the show cause notice dated 10.04.2014 contains paragraph No.19, which is as

under:

"19. The Department reserves its right to amend, modify or supplement this notice at any time on the basis of available/further evidences prior to the adjudication of the case."

11. The respondent department wants to take shelter against the aforesaid clause. In our considered opinion, the department cannot take shelter under the paragraph No.19 of the show cause notice for the reason that the same contains expression *"prior to the adjudication of the case"*. In common legal parlance, adjudication is a legal process of deciding/resolving the dispute, which ends with the decision declaring the rights, obligations and liabilities of the parties involved. It is not denied or controverted by the respondents that the proceedings initiated from the show cause notice, got over on 11.07.2016 and the Adjudicating Authority kept the matter for final orders. Thus, the adjudication process got over on 11.07.2016 when the matter was kept for final orders. Thus, the modification or supplementation of the notice on the basis of available further evidence, was available prior to the adjudication of the case, which the respondents have not done. It is true that adjudication of the case would also include the final orders however, the Corrigendum introduces something new or fresh evidence with fresh allegations into the show cause notice, which has travelled to the final stage of passing the final order. During the entire adjudication of the show cause notice, the department did not introduce the further evidence. Even if, it is assumed that it was permissible under paragraph No.19 to introduce further evidence prior to the adjudication of the case, the same has to fall in line with the

statutory provisions governing the adjudication.

12. At this stage, we may mention that the respective parties have placed reliance on the provisions of Sections 28(4), (7A), (8) and (9) of the Act. The relevant provisions are as under:

“28. Recover of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded:

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been "[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

XXX

(7A) Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).]

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice, '[xxx], in respect of case falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, '[xxx], in respect of cases falling under sub-section (4):

"PROVIDED that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

PROVIDED FURTHER that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]”

13. The provisions of sub-section (7A) of Section 28 of the Act on which, the respondents have placed reliance, were inserted by Finance Act, 2018 with effect from 28.03.2018. The respondents have placed reliance on the Customs (Supplementary Notice) Regulations, 2019, which are framed under the provisions of sub-section (7A) of Section 28 of the Act prescribing the manner and the circumstances under which supplementary notice has to be issued. The relevant provision on which reliance is placed, is Regulation 4(d) of Regulations of 2019, which reads thus:

“4. Manner and circumstances under which a supplementary notice may be issued. - (1) Where a notice has been issued under section 28 or section 124 of the Act, a supplementary notice may be issued by the proper officer in any of the following circumstances:

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(d) in case there is any additional evidence that may have a significant bearing on the outcome of the case.”

14. While referring to the decision of the Calcutta High Court in case of **Sandeep Kumar Dikshit (Supra)**, it is contended on behalf of the respondents that the provisions of Section 28 of the Act will apply retrospectively to the proceedings initiated vide show cause notice dated 10.04.2014.

14.1 On a perusal of the decision of the Calcutta High Court, we find that the decision specifically is premised on the interpretation of the provisions of Section 124 of the Act, which is also referred in the Regulations of 2019 and does not refer to the provisions of Section 28(7A) of the Act.

15. At the outset, we may observe that the provisions of sub-section (7A) of Section 28 of the Act which were inserted w.e.f. 28.03.2018, will not apply to the petitioners and show cause notice dated 10.04.2014 for the following reasons:

(a) the relevant extracts of notes and clauses of Finance Bill, 2018 relating to the introduction of sub-section (7A) in Section 28 refers to Explanation-4, which has been subsequently introduced by the Finance Act, 2020 with retrospective effect from 28.03.2018. The Explanation-4 under Section 28 of the Customs Act, reads as under :

"Explanation-4.*For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018, such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date."*

(b) Thus, the Explanation-4 unambiguously established that in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th Day of March, 2018 (in the present case in 2014), such notice shall be continued to be governed by the provisions of Section 28 of the Act as it stood immediately before such date. Thus, the provisions of Section 28 of the Act, which existed prior to March, 2018, will govern the case of the petitioners.

15.1 Thus, the respondents cannot take shelter under provisions of sub-section (7A) of Section 28 of the Act and

contend that the department can always issue supplementary notice on the basis of the fresh evidence, which has been collected. We are also of the opinion that Corrigendum, which is issued introducing paragraph No.5.1 with fresh allegations and evidence, cannot take the form of a supplementary notice as mentioned in the Regulations of 2019.

16. At this stage, we may also refer to the aforementioned provisions of sub-sections (4), 8 and 9(b) of Section 28 of the Act. It is not denied by the respondent-department that the case of the petitioners for levy of the duty has been considered under the provisions of sub-section (4) to Section 28 of the Act, which mentioned the limitation of five years for issuance of service of notice on the person, chargeable with duty or interest. Sub-section (8) to Section 28 of the Act mandates that the Proper Officer shall *"after allowing the concerned person an opportunity of being heard and after considering the representation, if any, determine the amount of duty or interest"*. In the present case, the petitioner after issuance of show cause notice, participated in the proceedings, filed his representation, and was granted an opportunity to cross-examined the case, the Adjudicating Authority had also recorded the evidence of the Chemical Analyzer, who had admitted that the samples were collected from other entity i.e. M/s. Krishna Colour Chem and not of the petitioners and when the concerned Proper Officer under sub-section (8) of Section 28 of the Act was obligated to pass the final orders, the Corrigendum was issued introducing new allegations and evidence to the original show cause notice.

17. At this stage, the provisions of sub-section (9) to Section 28 of the Act, become very relevant. The sub-clause (b) to sub-section (9) of Section 28 of the Act, which was prevailing at the relevant time, contained the expression “where it is possible to do so” in sub-clause (a) as well as sub-clause (b). Thus, the provision at the relevant time before the Amendment of 2018 read as *“the Proper Officer shall determined the amount of duty or interest under sub-section (8) within one year from the date of notice where it is possible to do so in respect of cases falling under sub-section (4)”*. Thus, the limitation of determining the amount of duty or interest under sub-section (8) of Section 28 of the Act after the adjudication process was prescribed is one year with a condition that “where it is possible to do so” for the Proper Officer.

18. In the present case, there is nothing on record which prevented the Proper Officer from passing a final order within a period of one year from the date of the notice, i.e. 10.04.2014. Instead of passing the final order upon conclusion of the adjudication proceedings, which came to an end on 10.07.2014, the Corrigendum came to be issued after a period of almost two years, on 22.08.2016. Hence, on this aspect, the Corrigendum, which has been issued by introducing new evidence and fresh allegations in connection with M/s. Krishna Colour Chem, with which the petitioners have denied having any connection, is required to be ignored, as it was also issued beyond the period of one year without there being any explanation from the department as to why it was not possible for the respondent Officer to pass an order determining the

amount of duty or interest under sub-section (8) of Section 28 of the Customs Act. Hence, on this count also, the Corrigendum issued by the respondents cannot be considered or delved into at the stage of passing the final order.

:FINAL ORDER:

19. On the overall analysis of facts and the statutory scheme governing the issue raised before us, we are of the opinion that the action of the respondent-department in issuing the impugned Corrigendum was uncalled for. Hence, the writ petition **succeeds**. The respondents are directed to pass final orders on the proceedings initiated vide show cause notice dated 10.04.2014 ignoring the impugned Corrigendum, dated 22.08.2016 (Annexure-F), within a period of 06 (six) weeks from the date of receipt of this order. RULE is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI, J)

NEHA/1