

(2015) 10 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 12065 of 2015

Reliance Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contempt of Courts Act, 1971 — Section 2(b)

Customs Act, 1962 — Section 114A, 12, 142, 17, 18

Citation : (2015) 326 ELT 664

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : J.C. Patel, Shilpa Balani and Dilip L. Kanojiya, Advocates, for the Appellant; Y.N. Ravani, Advocate, for the Respondent

Judgement

Harsha Devani, J.—Rule. Mr. Y.N. Ravani, learned senior standing counsel waives service of notice of rule on behalf of the respondent. Having regard to the controversy involved in the present case, which lies in a very narrow compass, with the consent of the learned counsel for the respective parties, the matter was taken up for final hearing today. The first petitioner, a company engaged in the refining of crude petroleum oil and the second petitioner, the Sr. General Manager of the first petitioner, have by this petition under Article 226 of the Constitution of India challenged the order-in-original dated 20-5-2015 (Annexure-F to the petition), passed by the Commissioner, Customs and Central Excise, Rajkot (hereinafter referred to as "the adjudicating authority") in the following backdrop.

2. The first petitioner-company imported 264 consignments of crude petroleum oil at the Port of Sikka and filed with the Customs, Bills of Entry for warehousing of the said goods. Pursuant to the said Warehousing Bills of Entry, the imported goods were deposited in the customs bonded warehousing located within the jurisdiction of the Commissioner of Customs and Central Excise, Rajkot, the second respondent herein. The goods were thereafter removed from the

warehouse by filing ex-bond Bills of Entry for home consumption clearance. The ex-bonds Bills of Entry were subjected to provisional assessment under Section 18(1) of the Customs Act, 1962 (hereinafter referred to as "the Act"). The said provisional assessments were made during the period December, 1999 to February, 2005.

3. The provisional assessments came to be finalised by the Proper Officer of the Customs in 2011-12 and consequent upon such finalisation, the first petitioner paid the difference of duty between the duty finally assessed and the duty which had been provisionally assessed and paid in terms of Section 18(2)(a) of the Act. Subsequent to the payment of such differential duty payable on finalisation of provisional assessments, the Superintendent of Customs and Central Excise, Jamnagar by letters dated 5-1-2012 and 21-2-2012 called upon the petitioner to pay interest on such duty in terms of the provisions of Section 18(3) of the Act. In response thereto, the first petitioner by its letter dated 18-6-2012, pointed out to the Superintendent of Customs and Excise that the provisional assessments had been made prior to 13-7-2006, when, for the first time a provision was introduced by way of sub-section (3) to Section 18 of the Act for charging interest on duty consequent upon finalisation of the provisional assessment. It was submitted that sub-section (3) of Section 18 of the Act could not have retrospective operation and could not apply to goods which were imported and provisionally assessed prior to 13-7-2006. In support of such submission, the petitioner placed reliance upon the Board's Circular and judgments of the Tribunal wherein a view was taken that the provision of charging interest consequent on finalisation of provisional assessment cannot apply to cases where the provisional assessment had been made prior to the introduction of such provision.

4. A show cause notice dated 11-12-2012 came to be issued by the second respondent to the petitioner under Section 28 of the Act, proposing to hold the petitioner liable to pay interest amounting to Rs. 17,55,20,841/- under subsection (3) of Section 18 of the Act on the differential duty paid by the first petitioner consequent on finalisation of the provisional assessments. In response to the show cause notice, the petitioner by a reply dated 11-2-2013 raised various contentions with regard to the non-applicability of the provisions of Section 18(3) of the Act in the light of the facts stated hereinabove. The petitioner also placed reliance on various decisions of the Tribunal. Before the adjudicating authority, the petitioner during the course of personal hearing also placed reliance upon the decision of this Court in the case of Commissioner of Customs (Preventive) v. Goyal Traders, , 2014 (302) E.L.T. 529 (Guj.) , wherein the Court had held that prior to introduction of sub-section (3) of Section 18 of the Act, there was no liability to pay interest on the difference between finally assessed duty and provisionally assessed duty upon payment of which the assessee may have cleared the goods. It was only with effect from 13-7-2006 that such charging provision was introduced in the statute. Upon introduction therefore such provision created interest liability for the first time with effect

from 13-7-2006. In absence of any indication in the statute itself either specifically or by necessary implication giving retrospective effect to such statutory provision, the Court was of the opinion that the same cannot be applied to cases of provisional assessment which took place prior to the said date. The Court was of the view that any such application would amount to retrospective operation of law.

5. The adjudicating authority in the impugned order observed that in the present case the demand of interest on differential duty is made under Section 28 of the Customs Act and, accordingly, ignored the decision of this Court and held that the petitioner was liable to pay interest of Rs. 17,55,20,841/- and imposed an equal amount of penalty under Section 114A of the Act. Being aggrieved, the petitioners have filed the present petition.

6. Mr. J.C. Patel, learned counsel for the petitioner assailed the impugned order by submitting that the controversy before the adjudicating authority stood squarely covered by the decision of the jurisdictional High Court in the case of Commissioner of Customs (Preventive) v. Goyal Traders (supra) and that in the face of the binding decision, it was not permissible for the adjudicating authority to hold the petitioner liable to pay interest on the differential amount of duty. Reference was made to the affidavit-in-reply filed on behalf of the respondent to point out that a stand has been adopted therein that the decision of this Court in the case of Commissioner of Customs (Preventive) v. Goyal Traders (supra) has not been accepted on merits by the department and that in the light of the instructions issued by the Board, the adjudicating authority cannot follow the decision of this Court. The attention of the Court was invited to the decision of the Supreme Court in the case of Union of India and others Vs. Kamalakshi Finance Corporation Ltd., wherein the Court held that it is of utmost importance that, in disposing of quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline required that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws. It was submitted that, therefore, the adjudicating authority was bound to follow the decision of the jurisdictional High Court and could not have ignored the same. The attention of the Court was also drawn to the decision of a Division Bench of this Court in the case of State of Gujarat v. The Secretary, Labour, Social Welfare & Tribal Development Dept., 1982 G.L.H. 55, wherein the Court has laid down the following propositions of law:-

"(11) From these four decisions, the following propositions emerge:

(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if law on a particular point has been laid down by the High Court, it must be followed by all authorities and Tribunals in the State:

(2) The law laid down by the High Court must be followed by all authorities and subordinate Tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding:

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."

6.1 It was submitted that view taken by this Court is that once the attention of the authority is pointedly drawn to the legal position, if the authority disregards that position, the same would amount to willful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971.

6.2 It was also pointed out that the Supreme Court in the case of *Jaswal Neco Ltd. Vs. Commissioner of Customs, Visakhapatnam*, has affirmed the view taken by this Court in the case of *Commissioner of Customs (Preventive) v. Goyal Traders* (supra) to submit that therefore, the decision of this High Court has attained finality on account of affirmation by the Supreme Court. The attention of the Court was invited to the impugned order-in-original to point out that while the adjudicating authority has noted that the petitioner has placed reliance upon the above referred decision of this Court, in the entire reasoning portion, he has not referred to the same. It was submitted that the main issue has been totally bypassed and the entire order has been passed as if the proceedings had been undertaken under Section 28 of the Act. It was, accordingly, urged that the petition deserves to be allowed by setting aside the impugned order.

7. Opposing the petition, Mr. Y.N. Ravani, learned senior standing counsel for the respondent raised a preliminary objection as to the very maintainability of the petition on the ground that the order impugned is an order-in-original passed by the adjudicating authority under the relevant provisions of the Customs Act. It was submitted that against the order passed by the adjudicating authority, appeal lies to the Customs, Excise and Service Tax Appellate Tribunal and, therefore, there being an efficacious alternative remedy available to the petitioner, this Court ought not to entertain the petition. It was submitted that all the submissions which have been advanced before this Court can very well be submitted before the Tribunal and merely because the petitioner may be called upon to make pre-deposit in the appeal preferred before the Tribunal, is no

reason for this Court to permit the petitioner to bypass the statutory remedy. It was submitted that on facts no special case has been made out so as to justify invocation of the writ jurisdiction of this Court in respect of an order passed by the adjudicating authority.

7.1 On the merits of the case it was submitted that it is the case of the petitioner that the impugned decision is incorrect and contrary to the law laid down by this Court; however, such submission can also be made before the Tribunal and that merely because the decision has not been dealt with by adjudicating authority is no ground for approaching the High Court directly. Referring to the impugned order, it was submitted that the adjudicating authority has taken a view that the interest is sought to be recovered under Section 28 of the Act. It was submitted that if the view taken by the authority is an erroneous view, the same does not entitle the petitioner to bypass the alternative remedy and to directly approach this Court. Reliance was placed upon the decision of the Supreme Court in the case of *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, , for the proposition that adequate remedy can be read in the statute, the plea of resort to writ remedy under Articles 226 and 227 must be discouraged. It was, accordingly, urged that the petition deserves to be dismissed on account of availability of an efficacious statutory alternative remedy and that even otherwise having regard to the facts and circumstances of the case, there is no warrant for interference by this Court.

8. This Court has considered the submissions advanced by the learned counsel for the respective parties and has perused the impugned order as well as the decisions cited by the learned counsel for the respective parties.

9. Since an objection has been raised to the very maintainability of this petition, it would be necessary to firstly deal with the same. It is a well settled legal proposition that where an alternative remedy is available, the High Court would ordinarily not exercise powers under Article 226 of the Constitution of India. However, it is equally true that there is no absolute proposition of law that where an alternative remedy is available, the High Court would refuse to exercise powers under Article 226 of the Constitution even if the facts so justify. The Supreme Court in the case of *Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal*, , after considering various decisions on the question of alternative remedy has held that it is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under

Article 226 . The Court observed that it had recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.

10. In *The State of Uttar Pradesh Vs. Mohammad Nooh*, , the Supreme Court held thus:

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

11. In the present case, it is the case of the petitioner that the adjudicating authority has not acted in accordance with the provisions of the Customs Act and in defiance of the law laid down by the jurisdictional High Court. On the facts as emerging from the record, and for the reasons that follow, this Court is of the view that the availability of an alternative statutory remedy of appeal, would not preclude the Court from entertaining this writ petition under Article 226 of the Constitution.

12. A perusal of the show cause notice issued to the petitioner shows that it has been issued on the ground that the petitioner has not paid interest on customs duty amounting to Rs. 17,55,20,841/- which was required to be paid as per the provisions of sub-section (3) of Section 18 of the Customs Act, as well as for recovery of such amount under Section 28 of the Act. However, in the impugned order, the adjudicating authority, before whom various decisions of the Tribunal as well as of this Court had been pointed out in support of the contention that the provisions of Section 18(3) of the Act would not apply in the present case as the same related to a period prior to insertion of sub-section (3) of Section 18 of the Act, has totally sidestepped the issue, ignored the decision of the jurisdictional High Court and has held the petitioner liable for payment of interest on differential duty under Section 18(3) of the Act. On a perusal of the impugned order, it appears that the adjudicating authority, not being in a position to deal

with the authorities cited before it, has ignored the fact that the basis for issuance of show cause notice was non-payment of interest on differential duty as required under Section 18(3) of the Act and has proceeded on the footing that the demand was made only under Section 28 of the Act and that there was no question of recovery of interest under Section 18(3) of the Act, thereby proceeding on a basis not contemplated in the show cause notice. The adjudicating authority, in almost every paragraph of the reasoning assigned by it, has reiterated the conclusion that interest is recoverable under Section 28 of the Act. It appears that by reiterating that it has arrived at the conclusion that interest is recoverable under Section 28 of the Act not less than nine times, the adjudicating authority seems to have wished away the question as regards applicability of the provisions of Section 18(3) of the Act and the decisions interpreting the said provision on which reliance had been placed by the petitioner.

13. The adjudicating authority in the impugned order, on merits, has observed that the demand is not made under Section 18(3) of the Act but the demand of interest is made under Section 28 of the Customs Act. In this regard reference may be made to the decision of the Supreme Court in *Commissioner of Customs, Bombay Vs. Virgo Steels, Bombay and Another*, wherein the Court has held thus:

"8. We will next consider the requirement of Section 28 of the Act and the applicability of the principle of waiver to the said requirement of that section. While so doing, it is to be noted that our discussion of Section 28 of the Act is with reference to the section as it stood at the relevant time and not with reference to the existing Section 28 of the Act. The Tribunal by the impugned order has held that in the absence of a notice under Section 28 of the Act, the recovery of duty which has escaped collection, is impermissible in law. While accepting this argument, the Tribunal has placed reliance on a judgment of this Court in *Collector of Customs, Calcutta Vs. Tin Plate Co. of India Ltd.*, . It is true that in the course of the above-cited judgment, this Court had held that a notice under Section 28 is a condition precedent, but having perused the said judgment carefully, we are of the opinion that this Court used the expression "condition precedent" with reference to issuance of notice under Section 28 and not with reference to the jurisdiction of the proper officer under that section. While the absence of notice may invalidate the procedure adopted by the proper officer under the Act, it will not take away the jurisdiction of the officer to initiate action for the purpose of recovery of duty escaped. This is because of the fact that the proper officer does not derive his power to initiate proceedings for recovery of escaped duty from Section 28 of the Act. Such power is conferred on him by other provisions of the Act which mandate the proper officer to collect the duty leviable. By a perusal of Chapter V of the Act in which Section 28 is found, it is seen that the charging section which authorises the levy of customs duty is found in Section 12 of the Act. Section 17 contemplates the procedure for making an assessment in regard to duty payable while sub-section (4) of Section 17 makes

a provision to empower the proper officer to reassess the imported goods for duty if it is found that the assessment made at the time of importation was based on incorrect or false information. Section 142 of the Act found in Chapter XVIII provides for actual recovery of sums due to the Government. A cumulative reading of these provisions found in the Act clearly shows that the jurisdiction of a proper officer to initiate proceedings for recovery of duty which has escaped collection, is not traceable to Section 28. The power to recover duty which has escaped collection is a concomitant power arising out of the levy of customs duty under Section 12 of the Act, and the same does not emanate from Section 28 of the Act. In our opinion, Section 28 only provides for the procedural aspect for recovery of duty, hence, any irregularity committed by a proper officer in following the procedure laid down in Section 28 would not denude that officer of his jurisdiction to initiate action for recovery of escaped duty but it may make such proceedings initiated by that officer voidable."

Thus, Section 28 of the Customs Act only provides for the procedural aspect for recovery of duty and is not a substantive provision for levy of duty under the Act. The show cause notice also, accordingly, reveals that the interest on the differential amount is sought to be recovered under Section 18(3) of the Act and that the provisions of Section 28 are resorted to only for the purpose of making such recovery. Therefore, the charge is under sub-section (3) of Section 18 of the Act and not under Section 28 of the Act.

14. Before this Court, in response to the averments made in the petition, an affidavit-in-reply has been filed on behalf of the respondents, which once again, fails to take into consideration the basis of the decision of the adjudicating authority and defends the impugned order on grounds not set out therein. In the affidavit-in-reply a stand is taken in paragraph 5 thereof that the decision of the High Court in the case of M/s. Goyal Traders (supra) has not been accepted by the department on merits as the amount involved in that case was below the threshold limit of Rs. 25 lakhs. Therefore, in the light of C.B.E. & C.'s instructions dated 20-10-2010 and 17-8-2011, the Department has not preferred to challenge the same before the Apex Court and it has been decided that the same will not be considered as a precedent. It is further averred that as per para 7 of the instructions dated 20-10-2010, it is clarified that "It may also be noted that, wherever it is decided not to file appeal in pursuance of these instructions, which are aimed solely at reducing Government litigation, such cases shall not have any precedent value". It is, accordingly, stated that the adjudicating authority cannot follow the decision of the High Court in the case of M/s. Goyal Traders (supra). In paragraph 6 of the affidavit-in-reply, the deponent of the affidavit-in-reply actually has had the temerity to say that the decision in the case of M/s. Goyal Traders (supra) does not have any precedent value.

15. At this juncture, it may be apposite to refer to the decision of the Supreme Court in the case of Union of India v. Kamlakshi Finance Corporation Ltd., (supra), wherein it has been held thus:

"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under subsection (1), where the Central Board of Direct Taxes comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate

Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

16. From the principles laid down in the above decision, it is manifest that the revenue officers are bound by the decisions of the higher authorities and cannot refuse to follow the same on the ground that the same is not acceptable to the department. The Supreme Court has also taken care to suggest as to what steps can be taken by the department to secure the interest of the revenue when the department has not accepted the decision of the higher authority, including the High Court. However, it is not open for the adjudicating authority or any other authority to ignore a binding decision of the Court on the ground that the department has not accepted the same. Adverting to the facts of the present case, while in the impugned order, the adjudicating authority has not stated that the order of this Court would not be applicable to the facts of the present case or that the said decision is not binding upon it, the adjudicating authority has totally evaded the issue and has treated the proceedings as being proceedings under Section 28 of the Customs Act only, without reference to Section 18(3) of the Act under which the interest of differential duty was sought to be levied.

17. As noted hereinabove, the show cause notice has been issued for recovery of interest on differential customs duty as per the provisions of subsection (3) of Section 18 of the Act, and resort has been made to Section 28 only for the purpose of recovery of such amount. Under the circumstances, unless it is held that the petitioner is liable to pay interest on the differential duty under Section 18(3) of the Act, the question of making any recovery of such interest amount under Section 28 of the Customs Act would not arise. The impugned order, which proceeds on the basis that the recovery is only to be made under Section 28 of the Customs Act without reference to Section 18(3) of the Act, therefore, not being in consonance with the show cause notice issued to the petitioner as well as the relevant statutory provisions, cannot be sustained.

18. This Court is conscious of the fact that ordinarily it would not exercise powers under Article 226 of the Constitution of India to set aside an order passed by the adjudicating authority when there is an efficacious alternative statutory remedy available under law. However, having regard to the facts of the present case wherein the controversy involved stands concluded by a decision of the jurisdictional High Court in the case of Commissioner of Customs (Preventive) v. Goyal Traders (supra), which stands affirmed by the Supreme Court in the case of Jaswal Neco Ltd. v. Commissioner of Customs, Visakhapatnam (supra), no fruitful purpose would be served by relegating the petitioner, either to the

adjudicating authority for deciding the matter afresh, or to the Tribunal, against the order passed by the adjudicating authority. Under the circumstances, in view of the exceptional circumstances involved in the present case, the Court has thought it fit to entertain the petition. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 20-5-2015 passed by the Commissioner, Customs and Central Excise, Rajkot (Annexure-F to the petition) is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.