

# Interplay between Section 28(1) and 28(4) of the Customs Act 1962

Case represented by



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## INTRODUCTION

In a writ petition, the Hon'ble High Court of Delhi stayed a Show Cause Notice (SCN) issued under Section 28(4) of the Customs Act, 1962. The SCN alleged misclassification and suppression of facts by the importer of mobile phone parts and demanded recovery of alleged short-paid customs duty amounting to ₹115 Crore, along with penalties under various provisions of the Act.

## CASE BACKGROUND

The Petitioner had been importing components of mobile handsets, asserting that these imports were incomplete parts rather than fully assembled mobile phones. An investigation by customs authorities, however, concluded that the goods constituted complete mobile sets in CKD (Completely Knocked Down) condition. A preliminary SCN was issued under Section 28(1) of the Customs Act, demanding recovery of alleged short-paid customs duty amounting to ₹5.3 crore and penalties under various provisions of the Act. Subsequently, an SCN under Section 28(4) of the Customs Act was issued, amplifying the charges and seeking further penalties. The Petitioner challenged the SCN, contending that it was importing only parts, a claim supported by expert opinions.

## QUESTION OF LAW

The Hon'ble High Court passed the interim order observing the actions under Section 28(4) require substantial evidence of suppression or misdeclaration by the importer. The Court noted that expert reports submitted by the respondents themselves suggested the imported items were incomplete mobile handsets requiring additional components and testing before being functional. This supported the Petitioner's claim of importing parts rather than complete devices. The Court found that the respondents had not presented any *prima facie* material to sustain the allegations of intentional suppression or misclassification. Consequently, the invocation of Section 28(4) was found to be questionable. Recognizing the potential for irreparable harm to the Petitioner, the Court restrained the respondents from proceeding further under the impugned SCN until the matter is fully adjudicated.

## LEGAL FRAMEWORK AND POWERS OF CUSTOMS AUTHORITIES

The Customs Act, 1962, provides an extensive framework for the classification, valuation, and taxation of goods imported into India. Under Section 28(1), customs authorities may demand duties not paid due to inadvertent errors or omissions. Section

28(4), however, targets cases involving fraudulent acts, such as collusion, wilful misstatements, or suppression of facts, and prescribes higher penalties along with retrospective recovery of duties.

Section 111 of the Act enumerates scenarios under which goods may be confiscated, including improper declarations or misclassification. Section 112 allows penalties for any act or omission that renders goods liable to confiscation. Furthermore, Section 114A mandates penalties in cases involving non-payment or short-payment of duties resulting from fraud or suppression of facts. These provisions collectively grant customs authorities significant powers to act against violators while ensuring compliance with fiscal laws.

However, the Act also incorporates safeguards to prevent abuse of these powers. Actions under Section 28(4) require clear evidence of deliberate suppression or fraud, rather than mere procedural lapses or interpretative differences. Judicial scrutiny plays a crucial role in interpreting these provisions and

ensuring their fair application. The present case illustrates how the judiciary ensures a balanced approach by requiring authorities to substantiate allegations with credible evidence before invoking severe penal provisions.

The Customs Act's provisions must also be seen in conjunction with principles of natural justice. The right to a fair hearing, the requirement for reasoned orders, and the prohibition against arbitrary actions are fundamental tenets guiding the exercise of powers under the Act. These principles are essential for maintaining public confidence in the integrity of customs administration.

## **CONCLUSION**

The writ petition raises substantial questions with respect to the issuance of SCN under section 28(4) of the Customs Act 1962. The *prima facie* view reinforces that allegations of suppression or misdeclaration must be substantiated by *prima facie* evidence before invoking penal provisions under the Customs Act. It also highlights the necessity of expert inputs and fair hearings in disputes involving complex classifications.

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The case is being handled with able assistance and strategic discussion from Mr Tarun Jain, Advocate and legal counsel for the firm.