

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH

**Customs Appeal No. 86696 of 2013**

(Arising out of Order-in-Original CAO No. 157/2007/CAC/CC/KS dated 27.12.2007 passed by the Commissioner of Customs (Adjudication), Mumbai.)

**M/s. Citibank N.A.** .....Appellant  
**293, Bombay Mutual Building,  
Dr. D.N. Road, Fort, Mumbai – 400 001**

*VERSUS*

**Commissioner of Customs** .....Respondent  
**(ACC & Import), Mumbai**  
**Air Cargo Complex,  
Sahar Andheri (East), Mumbai – 400 099**

**WITH**

**Customs Appeal No. 88690 of 2014**

(Arising out of Order-in-Original CAO No. 155/2007/CAC/CC/KS dated 27.12.2007 passed by the Commissioner of Customs (Adjudication), Mumbai.)

**Shri Mafatlal R. Mehta** .....Appellant  
**At Post: Hadecha, Tehsil- Sanchore,  
District : Jalore, Rajasthan – 343 027**

*VERSUS*

**Commissioner of Customs** .....Respondent  
**(ACC & Import), Mumbai**  
**Air Cargo Complex,  
Sahar Andheri (East), Mumbai – 400 099**

**AND**

**Customs Appeal No. 88691 of 2014**

(Arising out of Order-in-Original No. 157/2007/CAC/CC/KS dated 27.12.2007 passed by the Commissioner of Customs (Adjudication), Mumbai.)

**Shri Mafatlal R. Mehta** .....Appellant  
**At Post: Hadecha, Tehsil-Sanchore,  
District : Jalotre, Rajasthan – 343 027**

*VERSUS*

**Commissioner of Customs** .....Respondent  
**(ACC & Import), Mumbai**  
**Air Cargo Complex,  
Sahar Andheri (East), Mumbai – 400 099**

**APPEARANCE:**

Shri J.C. Patel, Advocate with  
Ms. Raveena Kinkhabwala, Advocate for Appellant - 1  
Dr. Sujay Kantawala, Advocate for the Appellant - 2 & 3

Shri Ashiwini Kumar, Additional Commissioner, Authorised Representative  
for the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**  
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/86108-86110/2022**

Date of Hearing: 23.09.2022  
Date of Decision: 25.11.2022

**PER: DR. SUVENDU KUMAR PATI**

Confirmation of penalty, after 15 years of issue of show-cause notice on the Appellant, under Section 112 of the Customs Act against importation by a third party of ATMs and its Controllers for alleged mis-declaration of description and value of goods is assailed in this appeal.

2. Facts of the case, in brief, is that Appellant Citibank is engaged in carrying on activities of banking services at its various branches located in India and it had purchased 12 numbers of ATMs and 6 ATMS Controllers in July, 1998 from M/s. Philips India. On 11.09.1992 show-cause notice was issued by the then Collector of Customs, Air Cargo Complex, Sahar, Mumbai on the allegation that those ATMs and ATMS Controllers were supplied by M/s Philips India to the Appellant after the same being imported by a company's/firm

of Mr. Jiten P. Mody by mis-declaration of description and value of goods in violation of Import Policy and without Import Licence. The notice also proposed for confiscation of machines under Section 111(d) and (m) of the Customs Act, 1962. Matter was adjudicated upon and penalty of Rs.1,50,00,000/- was imposed on the Appellant Citibank. Penalty of Rs.40,00,000/- each for two consignments were also imposed on Appellant Mr. Mafatlal R. Mehta, the Customs broker without any show-cause notices being issued to him. Legality of the said order is assailed in this appeal.

3. During the course of hearing of the appeal learned Counsel for the Appellant Mr. J.C. Patel, Advocate with Ms. Raveena Kinkhabwala, Advocate for Appellant - 1 and Dr. Sujay Kantawala, Advocate for the Appellant - 2 & 3 argued that Citibank is just a purchaser who purchased those ATMs through local sale invoices raised by M/s. Philips India and it has got nothing to do with importation of goods made by Jiten P. Mody and allegedly supplied to M/s. Philips India. It was further stated that no statement of any officer/ executive employee of the Appellant bank was recorded and basing on the statement of Mr. Jiten P. Mody as well as of some employees of Philips of India, Appellant has been implicated in this case and after Appellant tendered its reply to show-cause notice nothing was done by the Respondent-Department between 1992 and 2007 till Order-in-Original was issued on 30.11.2007. Mr. Patel strongly argued, with reference to the judicial decision of *Meghmani Organics Ltd. Vs. UOI* reported in 2019 (7) TMI 1409, *Siddhi Vinayak*

*Syntex P. Ltd vs. UOI* reported in 2017 (3) TMI 1534, *Shivkrupa Processors P. Ltd. Vs. UOI* reported in 2018 (3) TMI 1701, *Reliance Industries Ltd. Vs. UOI* reported in 2019-TIOL-1597-HC-MUM-CUS. He also argued that delay of over 15 years in passing the Order-in-Original vitiates the proceedings and there was no evidence available to establish that Appellant had any knowledge about ATMs and ATMs Controllers being supplied by M/s. Philips India had been imported by any company/firm of Mr. Jiten P. Mody, apart from the fact that no specific provision of Section 112 was held to be made out against the Appellant bank to order penalty for violation of the said specific provision of Section 112 of the Customs Act, for which the order passed by the Collector of Customs is unsustainable in law and facts. In respect of the other Appellant Mafatlal R. Mehta learned Counsel for him Mr. Kantawala argued that the said Mafatlal Mehta was never been noticed nor was called up to participate in the adjudication process and after recovery proceeding was initiated in 2014, Appellant's son tried his best to get the copy of the order passed way back in 2007 in gross violation of principle of natural justice and thereafter the appeal has been filed by the Appellant Mafatlal R. Mehta, who is now suffering from AIDS with various other ailments and is living in misery at his native village. In enclosing copy of medical documents of the Appellant alongwith the appeal memo he requested for setting aside the order passed in the absence of the Appellant and in violation of principle of natural justice by the Commissioner of Customs.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. Shri Ashwini Kumar, while supporting the reasoning and rationality of the order passed by the Commissioner (Appeals), submitted that investigation by DRI had unearthed such evil design of the Appellants in importing ATM machines without import licence and with mis-declaration for the purpose of evading the Customs duty and report received from DRI vide the letter dated 17.03.2020 indicates that show-cause notice was issued to the Citybank Appellant, but it was returned by the postal authority as refused by the recipient and the role of Appellants have been specifically stated in the Order-in-Original that refutes the allegation of Appellant that its role/participation has not been indicated in the Order-in-Original. Further, he submitted that these appeals are hopelessly barred by limitations as Order-in-Original was issued in 2007 and appeals have been filed in 2014, after a gap of almost 7 years, for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. We have perused the case record. On limitation, this Tribunal had specifically condoned the period of delay of 5 years and 4 months in filing the appeals by imposing cost of Rs.20,000/- that has been paid to the Respondent-Department. This being so and having been addressed by this Tribunal the ground that appeal is barred by limitation cannot be agitated again. In respect of the unusual delay in passing the Order-in-Original, law is well settled that such unusual delay vitiates the proceedings, on which count alone the appeals can

be stated to have merit. Moreover, our attention is drawn to the copy of the letter of DRI dated 17.03.2020 addressed to the Commissioner (AR) CESTAT, Mumbai that clearly indicates that show-cause notice was not received by Appellant Mafatlal R. Mehta, and the same letter of DRI was issued upon perusal of their own records. Further, it also indicates that there was no proof of service of intimation of personal hearing of notices on Appellant Mafatlala R. Mehata. Unfortunately, he has been penalised in gross violation of the principles of natural justice. In the normal course, an opportunity could have been given to him for a *de novo* adjudication after compliance of service of show-cause notice and personal hearing but in the instant case Appellant is an AIDS patient and is in the terminal stage of his sickness. Further, the alleged occurrence had taken place way back in 1992. In such as circumstances, with possibility of evidence fading away over the ages, Appellant Mafatlal R. Mehta deserves to be relieved from his liability, which going by the case record would clearly reveal that a general allegation of abatement against him without a clear finding was only levelled against him for his involvement during clearance of goods from Customs as a Customs broker.

6. In respect of Appellant bank, as could be observed during the course of hearing and from the case record, it is a subsequent purchaser of the goods form M/s. Philips India who had allegedly purchased the imported goods imported by Jiten P. Mody and no complacence is noticeable between the Appellant bank and the said

Jiten P. Mody except that in the statement of Mr. Ramamrutham, former Philips India employee, it is stated that they considered the possibility of importing ATMs from Philips Holland to Philips India through 3<sup>rd</sup> party supplier and after obtaining quotation from the said importer Jiten P. Mody, they quoted price of the machine to banks namely Citibank and HSBC bank with 40% profit margin. This being a transaction concerning purchase of an item within India, which is unrelated to its importation and to the importer as the said transaction is confined between the Appellant Citibank and M/s. Philips India, confirmation of penalty under Section 112 of the Customs Act against this Appellant is unsustainable both in law and facts. Hence the order.

THE ORDER

6. The appeals are allowed and the order passed by the Commissioner of Customs (Adjudication), Mumbai vide Order-in-Original CAO No. 157/2007/CAC/CC/KS dated 27.12.2007 is hereby set aside.

(Order pronounced in the open court on 25.11.2022)

**(Dr. Suwendu Kumar Pati)**  
**Member (Judicial)**

**(Sanjiv Srivastava)**  
**Member (Technical)**