

**M/s Navayuga Engineering Co. Ltd.**

v.

**Union of India & Anr.**

(Civil Appeal No. 1024 of 2014)

23 July 2024

**[Pamidighantam Sri Narasimha\* and Aravind Kumar, JJ.]**

**Issue for Consideration**

- (i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962; (ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act; (iii) What is the true and correct ratio of the decision in [Jagdish Cancer case](#).

**Headnotes<sup>†</sup>**

**Customs Act, 1962 – s.125 – Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962:**

**Held:** The owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act – When confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it. [Paras 8.2, 8.4]

**Customs Act, 1962 – Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act:**

**Held:** The text of Section 125(2) clearly provides that, where any fine in lieu of confiscation of goods is imposed under sub-Section (1), the owner of such goods shall be ‘liable to any duty and charges payable with respect to such goods’ – The sub-section provides that the liability to any duty and charges, that are payable, shall be paid in addition to the fine – Section 28 would come into operation for assessing and determining the duty and other charges payable with

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respect to goods redeemed under Section 125(2) – Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB – The said provision obligates payment of interest in addition to the duty – Thus, the question is answered by holding that the interest liability under Section 28 AB is also attracted. [Para 10.1]

**Customs Act, 1962 – What is the true and correct ratio of the decision in Jagdish Cancer case:**

**Held:** Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under Section 28. [Para 9.6]

### Case Law Cited

*Commr. of Customs (Import) v. Jagdish Cancer and Research Centre* [2001] Supp. 1 SCR 245 : (2001) 6 SCC 483; *Union of India v. M/s Security and Finance (P) Ltd.* [1976] 2 SCR 87 : (1976) 1 SCC 166; *Fortis Hospital Ltd. v. Commr. of Customs, Import* [2015] 4 SCR 456 : (2015) 12 SCC 715 – referred to.

### List of Acts

Customs Act, 1962.

### List of Keywords

Custom duty; Liability to pay custom duty; Confiscated goods; Fine; Payment of fine; Redemption of confiscated goods after payment of fine; Section 125 of the Customs Act, 1962; Liability to pay interest on delayed payment; Section 28AB of the Customs Act, 1962; True and correct ratio of the decision in Jagdish Cancer case.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1024 of 2014  
From the Judgment and Order dated 29.08.2009 of the High Court of Bombay in WP No. 1387 of 2009

### Appearances for Parties

Ms. Charanya Lakshmikumaran, Ms. Apeksha Mehta, Ms. Neha Choudhary, Ms. Umang Motiyani, Ms. Jyoti Pal, Ayush Agrawal, Ms. Falguni Gupta, M. P. Devanath, Advs. for the Appellant.

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N Venkataraman, A.S.G., V C Bharathi, Ms. Amritha Chandramoulli, S A Haseeb, Kritagya Kait, Udai Khanna, Mukesh Kumar Maroria, Advs. for the Respondents.

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**Pamidighantam Sri Narasimha, J.**

1. *Introduction:* The following two questions arose for our consideration;  
i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962?<sup>1</sup> ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act? Adjudication of these questions brought to light certain seemingly contradictory decisions on this question, and this

<sup>1</sup> Hereinafter referred to as 'the Act'.

\* Ed. Note: Pagination as per the original Judgment.

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requires us to reflect on the correct ratio of the decision of this Court in *Commr. of Customs (Import) v. Jagdish Cancer and Research Centre*.<sup>2</sup> Therefore, the third question that fell for our consideration is; iii) What is the true and correct ratio of the decision in *Jagdish Cancer case*?

1.1. For the reasons to follow, we have held that the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine under Section 125 of the Act. Furthermore, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125 will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepts it. Liability to pay customs duty in such confiscation proceedings under Section 125(2) is distinct from the assessment and determination of duty, which can rise only under Section 28. The duty liability arising under Section 125(2) must be assessed under Section 28. Thus, we answered the second question by holding that once Section 28 applies for determination of duty, interest on delayed payment of duty under Section 28AB follows. We have also clarified that *Jagdish Cancer case* is not an authority for the proposition that when the liability to pay customs duty arises under Section 125(2), the calculation, determination or the assessment of such duty cannot be made under Section 28.

- 1.2. The facts relevant for consideration of the issues are as follows.
2. *Facts:* Between 30.11.2003 to 18.04.2007, the appellant availed the benefit of exemption from payment of customs duty under a notification dated 01.03.2002, as per which certain self-propelled hydraulic piling rigs were to be utilised exclusively for the construction of roads, bridges etc. for NHAI<sup>3</sup> and PWD.<sup>4</sup> When investigations revealed that the appellant has violated the import conditions, even before a show-cause notice was issued, the appellant deposited Rs.16,29,22,282/- and interest of Rs. 1,84,39,696/- between May,

2 [2001] Supp. 1 SCR 245 : (2001) 6 SCC 483, hereinafter referred to as Jagdish Cancer case.

3 National Highways Authority of India.

4 Public Works Department.

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2007 to August, 2007. Thereafter, a show-cause notice<sup>5</sup> was issued on 23.01.2008 proposing confiscation under Section 111(o) with respect to goods that were valued at Rs. 48.55 crores involving duty liability of Rs. 17,37,57,039/- under Section 28, interest under Section 28AB and penalties under Sections 112(a) and (b) and 114A of the Act. The appellant filed an application under Section 127B of the Act before the Settlement Commission claiming that it has not violated any condition of the notification dated 01.03.2002 and further claimed that in order to avoid prolonged litigation, they had accepted the liability subject to further adjustments as may be approved by the Settlement Commission. The appellant also asserted that the claim for interest under Section 28AB is impermissible as the proceedings were initiated with show cause notice under Section 124 and not under Section 28.

- 2.1. The Settlement Commission upheld the duty liability and directed it to be recovered. The penalty and fine were waived in full in view of the finding that this is not a case of brazen defiance of law and also that there is no contumacious conduct such as misdeclaration or manipulation of documents to evade payment of duty. On payment of interest under Section 28AB, the Settlement Commission held that, for violation of post-importation conditions, imported goods become liable for confiscation but are redeemable on payment of fine in lieu of confiscation and the duty becomes payable under Section 125(2). Following the decision of this Court in *Jagdish Cancer case*, the Commission held that as Section 28 is inapplicable in confiscation proceedings, Section 28AB will also not be attracted. The interest deposited by the appellant was, therefore, directed to be refunded.
- 2.2. The writ petitions filed by the Customs Department were allowed by the order impugned before us. The High Court held that i) interest can be levied only when there is a substantive provision enabling it, ii) Section 125 has no such enabling provision, not even the procedure to assess duty, therefore, iii) assessment of duty must necessarily be done under Section 28 and iv) once Section 28 procedure is adopted, application of Section

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5 The show cause notice is purportedly issued under Section 124 read with Section 28 of the Act.

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28AB is inevitable. The High Court, therefore, distinguished *Jagdish Cancer case* and held that interest under Section 28AB is payable even for proceedings under Section 125 and remanded the matter to the Settlement Commission to calculate and recover interest under Section 28AB.

- 2.3. Ms. Charanya Lakshmikumaran and Mr. V C Bharathi appeared for the Appellant and the Custom Department respectively. They have not only enhanced our understanding of the subject and the issue, but have elevated the debate.
3. *Sections 11 and 12 of the Act:* Section 11 of the Customs Act<sup>6</sup> vests the power in the Central Government to prohibit absolutely or subject to such conditions, as may be specified in the notification, the import or export of goods into or out of India. Under Section 45 of the Act, all imported goods unloaded in a customs area shall remain in the custody of the customs authorities. The importer shall present a bill of entry under Section 46 and self-assess the duty under Section 17. Alternatively, under Section 47 the goods are provisionally assessed by the authority under Section 18 and cleared for home consumption. Goods are cleared for home consumption only after the customs officer is satisfied that the goods are not prohibited for home consumption and the import duty is paid. Duties of customs shall be levied under Section 12<sup>7</sup> on goods that are imported into or exported from India at such rates as are specified under the Customs Tariffs Act, 1975.
4. *Section 28 of the Act:* If duties are, i) not levied, ii) not paid, iii) short levied, iv) short paid, v) erroneously refunded, vi) interest not paid, vii) interest, part paid or viii) interest erroneously refunded, a distinct procedure is provided in Section 28 of the Act. This

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6 **Section 11: Power to prohibit importation or exportation of goods.**—(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) ...

(3) ...

7 **Section 12: Dutiable goods.**—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

[2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]

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very section provides a slightly varied procedure for recovery in sub-Section (4) for instances, where duties are not paid due to, i) collusion, ii) wilful misstatement or iii) suppression of facts. The distinction in the procedure includes different periods of limitation for initiation of recovery process. Section 28 to the extent, it is relevant for us is as under:

***"Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—***

*(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been 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:*

*[Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]*

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—*

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer,*

*the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

*[Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]*

*(2) [...]*

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(3) [...]

(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.”*

5. *Confiscation of goods under Chapter XIV of the Act:* The third circumstance where duty is collected is when goods are improperly imported into or exported out of India. Chapter XIV of the Act provides for confiscation of such goods and imposition of penalties under Sections 111<sup>8</sup> to 114. Section 111(o) is the specific instance for confiscation of goods for violation of conditions of exemption from payment of duty after the importation. These goods were not subjected to levy and collection of duty as they enjoyed the benefit of exemption. Upon detection of a violation, the legal consequences must and will follow and Chapter XIV provides for confiscations and penalties.

5.1. Confiscation of goods is appropriation of property by the revenue. The right, title and interest in the property, if any, is transferred and vested in the state under Section 126. Considering the

8 **Section 111. Confiscation of improperly imported goods, etc.**—The following goods brought from a place outside India shall be liable to confiscation:—

(a) ... (n)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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serious consequences of such an action, authority and process of law mandated Article 300A,<sup>9</sup> Parliament prescribed the procedure under Section 122A, adjudicatory authority under Section 122, obligated issuance of a show-cause notice under Section 124 before confiscation.

6. **Section 125 of the Act:** Alternatively, there is also the option of redemption of the confiscated goods under Section 125, the statute specifically empowers the owner of the goods to exercise an option of legitimising the importation by paying fine, duty and other charges. The procedure prescribed is simple; i) confiscation must be authorised, ii) those goods should not be prohibited goods, iii) the officer shall give an option to redeem the goods in lieu of fine, iv) the owner or the possessor must exercise the option and v) pay the fine vi) within 120 days. The purpose and object of Section 125 is to enable a transition from ‘illegality’ to ‘compliance’ of laws. It grants an opportunity to the owner or possessor of the confiscated goods to regularise the transaction by payment of fine. This provision is based on a public policy consideration that balances crime and punishment and achieves the twin objectives of enabling a citizen to remain on the right side of law by adopting a prescribed measure and amicable settlement of disputes through resolution. Section 125 is extracted herein below for ready reference:

**“Sec 125. Option to pay fine in lieu of confiscation.**

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in*

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9 **Article 300A. Persons not to be deprived of property save by authority of law.**— No person shall be deprived of his property save by authority of law.

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*respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:*

*[Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]*

*[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending. Explanation.—.....”]*

7. **Issues:** It is in the above referred ‘context’ that we will now interpret the ‘text’ of Section 125 to examine the following issues:

- i) *Whether there is a liability to pay customs duty when confiscated goods are redeemed after payment of fine under Section 125 of the Act?*
- ii) *Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?*

7.1. While answering these questions, we will have to explain the decision of this court in Jagdish Cancer case as it is argued to have ruled that duty in confiscation proceedings is payable only under Section 125 and not under Section 28, and if Section 28 does not apply, Section 28AB also will not apply. Therefore, the third question is:

- iii) *What is the true and correct ratio of the decision in Jagdish Cancer case?*

8. *Re: Whether there is a liability to pay customs duty, when the confiscated goods are redeemed after payment of fine under section 125 of the Act?*

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8.1. This issue is no more *res integra*. The uncertainty about the liability to impose and collect duties in confiscation proceedings was resolved in 1976 by a decision of this court in *Union of India v. M/s Security and Finance (P) Ltd.*<sup>10</sup> while interpreting identical provisions, as they stood under the Sea Customs Act, 1878. In this case, the court was dealing with confiscation of goods that were imported without a proper license which was and is prohibited by law. Though the goods were confiscated, they were released to the importer, who exercised the option to redeem them under Section 183 of the repealed Act. Consequently, Customs Department sought to collect the duty payable on such goods. The High Court accepted the importer's challenge to imposition and collection of duty on the ground that Section 183 proceedings authorised only a fine and not customs duty. This court allowed the appeal of the Custom Departments by drawing a distinction between the power to impose or recover duty under Section 20 (Section 12/28 of our Act) on one hand, and the power to impose penalty and/or fine under Section 183 (Section 125 of our Act). This Court held that they are distinct and operate independently. The relevant portion of the judgement is as under:

*"5. Does the order under Section 183 preclude him from levying duty under Section 20? This is the short issue before us. A close study of the scheme of the relevant provisions, powers and levies discloses a clear dichotomy which has escaped the attention of the High Court. Import/Export duty is an obligation cast by Section 20 of the Act. It is a tax, not a penalty; it is an innocent levy once the exigible event occurs; it is not a punitive impost for a contravention of the law. Confiscation, penalty and fine provided for under Sections 167 (item 8) and 183 are of the species of punishment for violation of the scheme of prohibition and control. Once this distinction and duality are remembered, the interpretative process simplifies itself.*

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10 [1976] 2 SCR 87 : (1976) 1 SCC 166, hereinafter referred to as *Security Finance* case.

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8. ....In the present case, the Deputy Collector, the competent authority, has chosen to give the owner of the goods, the respondent, option to pay, in lieu of confiscation, a fine. He has not confiscated the goods and, therefore, Section 184 is not operational in this context. In short, the obligation under Section 20 is independent of the liability under Section 183. The order, dual in character, although clubbed together in a single document, is therefore valid in entirety. Even so, the confusion has been caused by the Deputy Collector failing to keep distinct the two powers and the two liabilities and thereby leading to avoidable jumbling.

10. However, we are prepared to gather from the order under attack two levies imposed in exercise of two distinct powers, as earlier explained. The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20. Likewise, the authority when it imposed a fine, was exercising its power under Section 183. We can readily see that he did not mean to confiscate the goods. He only proposed to confiscate and proceeded to fix a fine in lieu thereof. Non-felicitous and inept expressions used in the order are perhaps apt to mislead, but the intendment is clear that what was done was not confiscation but giving an option to pay a quantified fine in place of confiscation. The order was a composite one, when read in the sense we have explained, and is quite legal. Therefore, we reach the conclusion that the appellant is entitled to win and the High Court was in error."

- 8.2. The Act must always be read as a whole. Once the liability of confiscation is withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods to be subjected to duty. The power and the machinery provisions for imposition and collection of duty liability exist only under Section 12 and/or Section 28 and not under Section 125. The essence of the judgment in *Security Finance* case is in the following

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sentence: "*The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20*".

- 8.3. The scope of enquiry in this judgement was limited to answering whether there is a liability to pay customs duty in confiscation proceedings when goods are redeemed upon payment of fine. This judgment is not concerned with instances like in the present case where goods are imported without payment of duty under an exemption notification.
- 8.4. The above referred judicial interpretation has attained statutory recognition in 1985 when the Parliament introduced subsection (2) to Section 125 to clarify and declare that the owner of goods, in addition to payment of fine, shall also be liable to pay duty and other charges upon exercising the option to pay fine to redeem goods. *Thus, the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act. This is the first principle.*
- 8.5. In our view, this position gleaned from *Security Finance* case has remained consistent with amendments introduced to Section 125 in the year 1985. The customs duty obligation on once exempted goods, liable to be confiscated for violation of conditions, arises only after the option to redeem them is exercised under Section 125. Once the option is exercised, the acceptance is subject to the conditions specified in Section 125. The primary condition is payment of fine in lieu of confiscation. Thus, this duty obligation is inextricably connected to the option to redeem the confiscated goods. In other words, it is a precondition for redemption.
- 8.6. The decision of this court in *Fortis Hospital Ltd v. Commr. of Customs, Import*<sup>11</sup> affirms this position. In *Fortis Hospital* case, the owner of the confiscated goods chose not to exercise the option under Section 125. However, the revenue sought to recover the duty payable under Section 28 of the Act. Holding that this is impermissible, the court held that:

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11 [2015] 4 SCR 456 : (2015) 12 SCC 715, hereinafter referred to as *Fortis Hospital* case.

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*"9..... It may be seen from the bare reading of the aforesaid Section that under Section 125(1) of the Act, option is given to the importer whose goods are confiscated, to pay the fine in lieu of confiscation and redeem the confiscated goods. Before this action is taken, show-cause notice is to be issued under the provision of Section 124 of the said Act. This provision pertains to confiscation of goods and provides procedural safeguards inasmuch as there cannot be any order of confiscating any goods or imposing any penalty on any person without complying with the procedure contained in Section 124. Section 124 mandates issuance of the show- cause notice before passing any such order and contemplates two actions: first, relating to confiscating of the goods and second, pertaining to imposition of penalty. Pertinently, this action does not deal with payment of import duty at all.*

*10. It is not in dispute that show-cause notice in the instant case was issued under Section 124 of the Act. Once such a show-cause notice was issued and as can be seen from the proposed action which was contemplated in this provision (as has been taken note of above), it was also confined to confiscation of the imported machinery and imposition of penalty. Nothing was stated about the payment of duty. However, in spite of the fact that show- cause notice was limited to confiscation of the goods and imposition of penalty, the final order which was passed included the direction to pay the customs duty as well. It is clear that when such an action was not contemplated, which even otherwise could not be done while exercising the powers under Section 124 of the Act, in the final order there could not have been direction to pay the duty.*

*11. Notwithstanding the aforesaid position, as pointed out above, the Department is taking shelter under the provisions of sub-section (2) of Section 125 of the Act. However, on a plain reading of the said provision, we are of the view that such a provision would not apply in case where option to pay fine in lieu of*

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*confiscation is not exercised by the importer. Trigger point is the exercise of a positive option to pay the fine and redeem the confiscated goods. Only when this contingency is met, the duty becomes payable. In the present case, admittedly, such an option was not exercised and the confiscated machinery was not redeemed by the Institute. As a matter of fact, thus, no fine has been paid.”*

- 8.7. This judgment also explains the position when the Customs Department wants to recover duty through ways, other than confiscation at the Chapter XIV. Explaining the alternative modes of recovery of customs duty, the court observed as follows;

*“16. It is not that the Department is without any remedy. We have gone through the provisions of notification No. 64 of 1988 dated 01.03.1988. As pointed out above, importer would be exempted from payment of import duty on hospital equipment only when the conditions contained in the said notification are satisfied. Some of the conditions, as pointed out above, are to be fulfilled in future. If that is not done and the importer is found to have violated those conditions, show-cause notice could always be given under the said notification on payment of duty, independent of the action which is permissible under Section 124 and Section 125 of the Act. It is also important to mention that under certain circumstances mentioned in the notification, the importer can be asked to execute a bond as well. In those cases, action can be taken under the said bond when the conditions contained therein are violated. Therefore, if the Department wanted the Institute to pay the duty, which may have become payable, it could have taken independent action; de hors Section 124 of the Act, for payment of duty, simultaneously with the notice under Section 124 of the Act or by issuing composite notice for such an action. No doubt, it could have waited for option to be exercised by the Institute under Section 125(1) of the Act as well and in that eventuality, duty would have automatically become*

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*payable under Section 125(2) of the Act. But when such an option was not exercised, it could have taken separate and independent action by issuing a show-cause notice to the effect that the Institute had violated the terms of exemption notification and therefore, was liable to pay duty.”*

- 8.8. *We can thus conclude the second principle that, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it.*
- 8.9. An important principle that needs to be recognised is that, the customs duty obligation in confiscation proceedings does not occasion either under Section 12 or 28. It has arisen because of the option available and exercised under Section 125. This obligation should not be confused with the method and procedure by which that customs duty is assessed and determined, which is provided under Section 28. It is in this context that we need to consider and explain the decision of this court in Jagdish Cancer case.
9. *Re: What is the true and correct ratio of the decision in Jagdish Cancer case?*
  - 9.1. The real contest in this case is about the correct ratio of the judgement in Jagdish Cancer case. According to the appellant, as this judgment holds that duty liability in confiscation proceedings arises because of Section 125 and not Section 28, there is no liability to pay interest on delayed payments under Section 28AB. The facts of this case are necessary to be recounted for a clear understanding of the ratio of this decision. In this case, the department issued a show-cause notice under Section 124 of the Customs Act demanding customs duty and proposed confiscation under Section 111(o) and penalty under Section 112.
  - 9.2. The importer contended that as there is no notice under Section 28, the demand and collection of duty are impermissible. We will extract the submission as recorded by this court in para 9 of the judgment, as it is important to know what was argued and what was decided:

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*"9. [...] Section 28 of the Act which falls in Chapter V provides for notice for payment of duties which has been demanded by the notice in this case. Therefore, it is submitted on behalf of the Centre that demand of customs duty and the order for payment of the same is relatable to only Section 28(1) of the Customs Act, as also found by the CEGAT. That being the position, the notice was beyond time and not by a competent officer authorised to issue the same. The argument, as advanced, though seems to be attractive but on scrutiny, we find no merit in it [...]"*

- 9.3. On the other hand, the Department defended its position by submitting as follows:

*"8. [...] It is submitted that the copy of the notice, as annexed, does not mention Section 28(1) of the Customs Act, in any case if it is taken to be there, as contended, that would make no difference. The submission is that sub-section (2) of Section 125 of the Customs Act provides that where any fine in lieu of confiscation of goods is imposed, the importer shall also, in addition, be liable to any duty and charges payable in respect of such goods."*

- 9.4. It is in the context of the above-referred submissions, that the court considered the fact that an option under Section 125 was given and it was in fact exercised. Thus, the liability to pay customs duty arose under Section 125(2) and therefore, the court held that the separate notice under Section 28 is not required. This is exactly what the court ruled by holding:

*"12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods" [...]."*

- 9.5. Again, in the same paragraph, the court notes that the occasion, origin, or the circumstance in which the liability to pay duty arose in

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the confiscation proceedings under Section 125 (2). In this case, the court was considering and rejecting the submission made on a misplaced premise that the proceedings have originated under Section 28. Payment of customs duty has not arisen either under Section 12 or Section 28, it has arisen because of Section 125(2). Therefore, a notice under Section 28 is not necessary. This is how the judgment needs to be understood, and it is in this perspective that the court has in fact rejected the importer's objection to the payment of duty.

*"12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods." A reading of sub-section (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short-levied or erroneously refunded etc. The order for payment of duty under Section 125(2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act."*

- 9.6. We conclude by holding that Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under Section 28.

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10. *Re: Whether the liability to pay such duty will include the liability to pay interest on delayed payment under section 28AB of the Act?*
  - 10.1. The text of Section 125(2) clearly provides that, *where any fine in lieu of confiscation of goods* is imposed under sub-Section (1), *the owner of such goods shall be 'liable to any duty and charges payable with respect to such goods'*. The sub-section provides that the liability to any duty and charges, that are *payable*, shall be paid in addition to the fine. We have held that Section 28 would come into operation for assessing and determining the duty and other charges payable with respect to goods redeemed under Section 125(2). *Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB*. The said provision obligates payment of interest in addition to the duty. We thus answer the last issue by holding that the interest liability under Section 28 AB is also attracted.
11. *Conclusion:* For the reasons mentioned hereinabove, we uphold the decision of the High Court in Writ Petition Lodging No. 1387 of 2009 dated 29.08.2009 and dispose of the present Civil Appeal No. 1024 of 2014. No order as to costs.

*Result of the case:* Appeal disposed of.

<sup>†</sup>*Headnotes prepared by:* Ankit Gyan