CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11458 of 2015

[Arising out of OIO-KDL/PCOMMR/PVRR/05/2015-16 dated 29/05/2015 passed by Commissioner of CUSTOMS-KANDLA]

J M Baxi & Co **.....Appellant**
Seva Sadan-Ii, Kandla,
Kutch
Gujarat

VERSUS

C.C.-Kandla **.....Respondent**
Custom House,
Near Balaji Temple,
Kandla,
Gujarat

APPEARANCE:
Shri C. R Gupta, Senior Manager (Legal) for the Appellant
Shri. P Ganesan, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. 12812/2023

DATE OF HEARING:13.12.2023
DATE OF DECISION:21.12.2023

RAMESH NAIR

This appeal is directed against order-in-original dated_29.05.2015, whereby the appellant was imposed a penalty of Rs. 5 Lakhs under Section 112(a) of Customs Act, 1962, on the charge that the appellant has not taken care that the Tariff Item 1701 had been omitted in First Schedule to The Additional Duties Of Excise (Goods of Special Importance) Act, 1957 w.e.f 08.04.2011 and accordingly the appellant have abated the evasion of duty by

M/s. Shree Renuka Sugar Ltd. It was also alleged that the appellant M/s. J M Baxi & Co. did not exercise due diligence and not explained their client with reference to the work related to clearance of cargo. Being aggrieved by the imposition of penalty, the appellant filed the present appeal.

2. Shri C R Gupta, Senior Manager, Legal of the appellant Company appeared and submits that in the main case of M/s. Shree Renuka Agriventures Ltd. this Tribunal has remanded the matter to the Adjudicating Authority vide Final Order No. A/10232-10234/2022 dated 10.03.2022. He further submits that even if the case of the appellant is taken independently, It can be seen that there is no offence or irregularity on the part of the appellant for imposition of any penalty. Therefore, the penalty be set aside and appeal be allowed.

3. We have carefully considered the submissions made by both the sides and perused the records. We find that though the appellant have strong *prima facie* case in their favour, however the penalty imposed on the appellant is consequential to the charges and demands made against Shree Renuka Sugar Ltd and Shree Renuka Agriventures Ltd. In that case this Tribunal vide Final Order No. A/10232-10234/2022 dated 10.03.2022, remanded the matter to the Adjudicating Authority. In such case, it is not proper for this Tribunal to decide the appeal of the appellant finally. Accordingly, we are of the view that the present matter is also needs to be re-considered along with main case of Shree Renuka Sugers Ltd, therefore we set aside the order related to the present appellant and remand the matter to the Adjudicating Authority for passing a fresh order along with other cases which were remanded by this Tribunal vide order dated 10.03.2022.

4. The appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open Court on 21.12.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK