Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12889 of 2018- DB

(Arising out of OIO-03-COMMR-CUS-VDR-II-RADISTONE-2008-09 dated 12/03/2009 passed by Commissioner of CUSTOMS-VADODARA-II)

Commissioner of CUSTOMS –
CGST & Central Excise Ahmedabad North ....**Appellant**
CGST & Central Excise Commissionerate Ahmedabad North,
1st Floor Customs House,
Navrangpura, Ahmedabad- 380009

VERSUS

Shreenath International ......**Respondent**
A/202, Shree Hari Park,
Besides Central Point, Ring Road,
Surat, Gujarat

WITH

(i) Customs Appeal No. 12891 of 2018- DB (Commissioner of C.E. & S.T.-Vadodara-ii)
(ii) Customs Appeal No. 10220 of 2024- DB (DEVENDRA ROADWAYS)
(iii) Customs Appeal No. 10322 of 2024- DB (SHREENATH INTERNATIONAL)
(iv) Customs Appeal No. 10323 of 2024- DB (SHRI SUNIL DANGI)
(v) Customs Appeal No. 10324 of 2024- DB (GREENWAYS IMPEX PVT LTD)
(vi) Customs Appeal No. 10553 of 2024- DB (MESSRS SHREE AMBAJI FIBERS PVT LTD)
(vii) Customs Appeal No. 10554 of 2024- DB (RAJESH AGARWAL)

[(Arising out of OIO-03-COMMR-CUS-VDR-II-RADISTONE-2008-09 dated 12/03/2009 passed by Commissioner of CUSTOMS-VADODARA-II), (Arising out of Order in Original AHM-CUSTM-000-PR-COM-028-2023-24 dated 31/01/2024 passed by Principal Commissioner of CUSTOMS-Ahmedabad)]

APPEARANCE:
Shri Ajay Jain, Shri Sudhanshu Bissa, Ms. Dimple Gohil, Shri Saurabh Dixit, Advocates & Shri Nilesh V Suchak C.A., for the Appellant- Assessee
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent- Revenue

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

Final Order No. 13007-13014/2024

DATE OF HEARING: 27.11.2024
DATE OF DECISION: 03.12.2024

RAMESH NAIR

These eight appeals have been filed by assessess and revenue against the respective orders as mentioned below. As all the appeals arise from the common investigation and facts, therefore, we take up the same for decision simultaneously.

S. No.	Appeal No.	Name of Appellant	Order-in-Original No. & date (Impugned order)

1	C/12889/2018	CCE, Ahmedabad	OIO dtd. 27.02.2009
2	C/12891/2018	CCE, Ahmedabad	OIO dtd. 27.02.2009
3	C/10220/2024	Devendra Roadways	OIO dtd. 31.01.2024
4	C/10322/2024	Shreenath International	OIO dtd. 31.01.2024
5	C/10323/2024	Shri Sunil Dangi	OIO dtd. 31.01.2024
6	C/10324/2024	Greenways Impex Pvt. Ltd.	OIO dtd. 31.01.2024
7	C/10553/2024	M/s. Shri Ambaji Fibers Pvt. Ltd.	OIO dtd. 31.01.2024
8	C/10554/2024	Shri Rajesh Agarwal	OIO dtd. 31.01.2024

1.1 The brief facts of the case are that show cause notice dated 21.10.2004 was issued proposing demand of Customs duty jointly and severally from M/s Greenways Impex Pvt. Ltd. and Shri Taufik Haji Gaffar of Rs. 4,71,06,235/-; Rs, 79,22,498/- from M/s Shreenath Interantional & Shri Taufik Haji Gaffar ; Rs. 14,95,736/- from M/s. Shree Ambaji Fibers Pvt. Ltd. & Shri Taufik Haji Gaffar and of Rs. 68,67,801/- from Shri Taufik Haji Gaffar. The said show cause notice was adjudicated by the Commissioner of Central Excise & Customs, Vadodara II vide Order-In-Original dated 27.02.2009 wherein duty demand was confirmed on only Shri Taufik Haji Gaffar and penalty was imposed on other co-noticees. Being aggrieved by the said order dated 27.02.2009 department filed the appeals before CESTAT seeking to fix the liability of duty jointly & severally on them (Shreenath International, Greenway Impex Pvt. Ltd. and M/s. Shree Ambaji Fibers Pvt. Ltd.), alongwith Shri Taufik Haji Gaffar as proposed in the show cause notice. The department appeal in the case of Shree Ambaji Fibers Pvt. Ltd. dismissed on the ground of government's litigation policy vide Final Order No. A/12540/2019. CESTAT vide order No. A/13001/2018 dated 15.11.2018 in department appeal No. C/240/2009 filed against the respondent Shri Taufik Haji Gaffar allowed by way remand to the adjudicating authority. However other two appeals of the departments i.e. Appeal No. 12889/2018 and 12891/2018 related to Shreenath International and Greenways Impex Pvt. Ltd are before us for decisions.

1.2 However against the order dated 27.02.2009 Shreenath International, Shri Sunil Dangi, Devendra Dand, Greenway Impex Pvt. Ltd., Vijay Agarwal, Shree Ambaji Fibers Pvt. Ltd. and Rajesh Agarwal also filed appeal. In the said matter CESTAT vide final order No A/11140-11146/2018 dated 05.06.2018 remanded back the matter to the Adjudicating authority.

1.3 On the basis of CESTAT's Final order dated 05.06.2018 and 15.11.2018 *denovo* proceeding was initiated by the Ld. Commissioner vide impugned order-in-original dated 31.01.2024 and Customs duty was confirmed jointly and severally as under. He also imposed the penalties on appellants.

(i) Confirm customs duty of Rs. 4,71,06,235/-and ordered for recovery of the same jointly and Severally from M/s Greenways Impex Pvt. Ltd. and Shri Taufik Haji Gaffar.

(ii) Confirm Custom duty of Rs. 79,22,498/- and ordered for recovery of the same jointly and Severally from M/s Shreenath International and Shri Taufik Haji Gaffar.

(iii) Confirm Customs duty of Rs. 14,95,736/- and ordered for recovery of the same jointly and severally from M/s. Shri Ambaji Fibers Pvt. Ltd. & Shri Taufik Haji Gaffar

(iv) Confirmed Customs duty of Rs. 68,67,801/- and ordered for recovery of the same from Shri Taufik Haji Gaffar .

1.4 Being aggrieved with the above order Appellants are again before this Tribunal

2. In this background we have heard Shri Ajay Jain, Ms. Dimple Gohil, Shri Sudhanshu Bissa , Shri Saurabh Dixit, learned Advocates and Shri Nilesh V. Suchak, Chartered Accountant for the appellant/ Assessee and Shri Girish Nair, Ld. Assistant Commissioner (AR) for the department.

3. We have carefully considered the submission made by both sides and perused the records.

3.1 As regard the impugned order dated 31.01.2024 passed by the Ld. Commissioner in respect of Shri Ambaji Fibres Pvt. Ltd., we find that the aforesaid order is legally not correct when the matter has already been decided vide Final Order No. A/12540/2019 dated 20.12.2019 and appeal of the department has been dismissed. In such circumstance, the Ld. Commissioner could not have decided the issue again in respect of the

Appellant Shri Ambaji Fibers. On this ground alone appeal of Shri Ambaji Fibers is allowed.

3.2 So far as Appeal No. C/10220/2024 of M/s. Devendra Roadways, Proprietor Devendra Dand, we find that Ld. Commissioner imposed the penalty of 5,00,000/- under Section 112(b) the Customs Act on appellant. However, it is seen that the said imposition is only a mechanical imposition inasmuch as, there is no evidence on record to show that the said appellant -transporter were aware of the fraud if any, committed by importers. They have been engaged to transport the imported goods from the Customs area. The goods were taken from Mumbai Docks only after the same were cleared by Customs Authority after checking everything. The transporter cannot be expected to know as to what fraud is going to be committed subsequently by the importers. As such, the imposition of penalties upon them, for transportation of goods, cannot be justified. We also find that Section 112(b) of the Customs Act, 1962 permits levy of penalty on any person who acquires possession or is in any way concerned in carrying, etc. any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Act. In the present case there is not an iota of evidence brought on records to prove that the appellant had any knowledge about the alleged mischief and smuggled character of the goods and moreover the goods were loaded under the cover of customs cleared bill of entries. In such circumstance, the provisions of Section 112(b) could not be invoked against the appellant for imposing penalty. Accordingly, we set aside the penalty imposed on all the Appellant.

3.3 As regard the other appeals, we find that in the present disputed matter vide impugned Order dated 31.01.2024 Ld. Commissioner confirming duty demand jointly and severally is prima –facie pre-mature. It is on record that the appeals (C/12889/2018 and C/12891/2018) of the department are pending before the tribunal against the order dated 27.02.2009 on the ground that the adjudicating authority should have treated (i) Greenways Impex Pvt. Ltd. (ii) M/s Shreenath International and Shri Taufik Haji Gaffar as the "person chargeable with the duty' and ought to have confirmed the demand on them jointly and severally from them instead of holding Shri Taufik Haji Gaffar alone. In view of this, we hold that the impugned order dated 31.01.2024 of Ld. Commissioner is premature. In fact, the Ld. Commissioner should have waited for the Tribunal to decide the pending matters.

3.4 In such circumstances, it will be just and proper that all the pending matter to be decided together by the Ld. Adjudicating authority. Accordingly, we remand all the remaining matters to the Ld. Adjudicating authority for fresh decision.

4. Accordingly, we allow the Appeal No. C/10553/ 2023 and C/10220/2024 and all other appeals are remanded for fresh adjudication.

(Pronounced in the open court on 03.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha