IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Sl.No.	Appeal Nos.	Appellant	Respondent
01	C/42616/2014	M/s. Subham Enterprises	CC (Sea Port-Export), Chennai
02	C/42739/2014	CC, (Sea Port-Export), Chennai	M/s. Ravi Enterprises
03	C/42625/2014	M/s. Patel Carrier Transport Service	CC (Sea Port-Import), Chennai
04	C/42626/2014	Vijay Suresh Shah	CC (Sea Port-Import), Chennai
05	C/42740/2014	CC, (Sea Port-Export), Chennai	M/s. Subham Enterprises
06	C/42741/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Sreepal Silk & Sarees
07	C/42742/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Trimurti International
08	C/42743/2014	CC, (Sea Port-Export), Chennai-IV	M/s. S.R. & Co.
09	C/42744/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Prachi Silks
10	C/42745/2014	CC, (Sea Port-Export), Chennai-IV	Kalpesh Patel
11	C/42746/2014	CC, (Sea Port-Export), Chennai-IV	Vishal Janak Agarwal
12	C/42747/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Navabharat Silk
13	C/42748/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Maharaja Impex
14	C/42749/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Jiju Silk Mills
15	C/42750/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Balaji International
16	C/42751/2014	CC, (Sea Port-Export), Chennai-IV	Ramanand Surekha
17	C/42752/2014	CC, (Sea Port-Export), Chennai-IV	Rajesh Bangawala
18	C/40026/2015	M/s. Shreepal Silks & Sarees	CC (Exports), Chennai
19	C/40027/2015	M/s. M. Jiju Silks	CC (Exports), Chennai
20	C/40030/2015	R. Senthil Kumar	CC (Sea Port-Export), Chennai
21	C/40033/2015	M/s. Manjunatha Shipping Services P. Ltd;	CC (Sea Port-Export), Chennai
22	C/40034/2015	M/s. S.R & Co.	CC (Sea Port-Export), Chennai
23	C/40035/2015	M/s. Balaji International	CC (Sea Port-Export), Chennai

(arising out of Order-in-Original No.29138/2014, dated 28.08.2014 passed by Commissioner of Customs, Chennai)

Appearance:

Sl.No.	Name		
20 to 23	Shri Sathish Sundar	Adv.	*For the Assessee*
1, 18 & 19	Shri Hari Radhakrishnan Shri Derrick Sam	Adv.	*For the Assessee*
7 & 9	Shri. Mudimannan	Adv.	
2	Shri Narayan R. Panicker	Adv.	
3 to 6 & 8, 10 to 17	None		
1 to 23	Ms. P. Hemavathi, and Shri K. Veerabhadra Reddy	Commr. (AR) JC(AR)	*For the Revenue*

CORAM:

Hon'be Shri D.N. Panda, Judicial Member
Hon'ble Shri Devender Singh, Technical Member

Reserved on 18.08.2016
Pronounced on 14.02.2017

FINAL ORDER NO. 40249-40271/2017

Per D.N. Panda:

Following assessees as well as Revenue came in appeal as mentioned against each and as tabulated below challenging the common **OIO No.29138/2014 dt.28/8/2014** passed in pursuance of the **Final order No.40155-40156/2014 dt.27/01/2014** of Tribunal on various grounds.

TABLE - 1

	Appeal Nos.	Appellant	Respondent	Appearance for Assessee	Appearance for Revenue
01	C/42616/2014	M/s. Subham Enterprises	CC (Sea Port-Export), Chennai	Shri Hari Radhakrishnan Shri Derrick Sam	Ms. P. Hemavathi Commr. (AR) Shri K. Veerabhadra Reddy JC(AR)
02	C/42739/2014	CC, (Sea Port-Export), Chennai	M/s. Ravi Enterprises	Shri Narayan R. Panicker	-do-
03	C/42625/2014	M/s. Patel Carrier Transport Service	CC (Sea Port-Import), Chennai	**None for the Assessee**	-do-
04	C/42626/2014	Vijay Suresh Shah	CC (Sea Port-Import), Chennai	**None for the Assessee**	-do-
05	C/42740/2014	CC, (Sea Port-Export), Chennai	M/s. Subham Enterprises	Shri Hari Radhakrishnan Shri Derrick Sam	-do-

Customs, Excise & Service Tax Appellate Tribunal

06	C/42741/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Sreepal Silk & Sarees	Shri Hari Radhakrishnan Shri Derrick Sam	-do-
07	C/42742/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Trimurti International	Shri Mudimannan	-do-
08	C/42743/2014	CC, (Sea Port-Export), Chennai-IV	M/s. S.R. & Co.	Shri Sathish Sundar	-do-
09	C/42744/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Prachi Silks	Shri Mudimannan	-do-
10	C/42745/2014	CC, (Sea Port-Export), Chennai-IV	Kalpesh Patel	**None for the Assessee**	-do-
11	C/42746/2014	CC, (Sea Port-Export), Chennai-IV	Vishal Janak Agarwal	**None for the Assessee**	-do-
12	C/42747/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Navabharat Silk	**None for the Assessee**	-do-
13	C/42748/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Maharaja Impex	**None for the Assessee**	-do-
14	C/42749/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Jiju Silk Mills	Shri Hari Radhakrishnan Shri Derrick Sam	-do-
15	C/42750/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Balaji International	Shri Sathish Sundar	-do-
16	C/42751/2014	CC, (Sea Port-Export), Chennai-IV	Ramanand Surekha	**None for the Assessee**	-do-
17	C/42752/2014	CC, (Sea Port-Export), Chennai-IV	Rajesh Bangawala	**None for the Assessee**	-do-
18	C/40026/2015	M/s. Shreepal Silks & Sarees	CC (Exports), Chennai	Shri Hari Radhakrishnan Shri Derrick Sam	-do-
19	C/40027/2015	M/s. M. Jiju Silks	CC (Exports), Chennai	Shri Hari Radhakrishnan Shri Derrick Sam	-do-
20	C/40030/2015	R. Senthil Kumar	CC, (Sea Port-Export), Chennai	Shri Sathish Sundar	-do-
21	C/40033/2015	M/s. Manjunatha Shipping Services P. Ltd;	CC (Sea Port-Export), Chennai	Shri Sathish Sundar	-do-
22	C/40034/2015	M/s. S.R & Co.	CC (Sea Port-Export), Chennai	Shri Sathish Sundar	-do-
23	C/40035/2015	M/s. Balaji International	CC (Sea Port-Export), Chennai	Shri Sathish Sundar	-do-

While assessees are in appeal on various grounds denying their liability under Customs Act, 1962 (herein after referred to as "The Act") Revenue's appeals are against no imposition of penalty under section 114 of that Act by the impugned order.

2.1 Giving the background of the case, learned counsel Shri Derrick Sam argued on behalf of the appellants in following appeals tabulated in TABLE – 2 below with the corresponding cross appeals of Revenue as under:-

TABLE - 2

Appeal No. of Assesse	Name of the Assesse	Cross Appeal No. of Revenue
C/42616/2014	Subham Enterprise	C/42740/2014
C/40027/2015	M.Jiju Silk Mills	C/42749/2014
C/40026/2015	Shreepal Silks & Sarees	C/42741/2014

(i) The readjudication made vide readjudication order No. **29138/2014, dated 28.08.2014** consequent upon remand of the matter by the Tribunal by **Final Order Nos. 40105-40126/2014, dated 22.01.2014** is under challenge in the present batch of appeals. There were two directions issued by Tribunal by that order:-

(a) First direction was to decide the claim of the ownership of the seized goods as claimed by high sea sellers in terms of the order of Hon'ble High Court on the basis of documents and provisions of the Customs Act and Regulations; and

(b) The second direction was that only upon determination of ownership, the demand of duty along with interest and penalties would be determined as proposed in the show-cause notice in accordance with law.

(ii) The Tribunal by Final order **No.40105-40126/2014** dated **22.01.2014** disposed the appeals against adjudication order **No.20684/2013** dated **12.06.2013** and order of rejection of provisional release of the goods passed in terms of O-I-O **No.19798/2012,** dated **22.11.2012**.

(iii) The adjudicating authority consequent upon the remand of the matter by the Tribunal as above, passed the re-adjudication order **No.29138/14 on 28.08.2014** with the consequences appearing in **para 6** thereof such consequences are under appeal in this batch of appeals.

(iv) M/s. Maruti Impex (refer para 3.7 of the order dated **22.01.2014** of the Tribunal) who was in appeal **no.C/42068/2013** before Tribunal **against order of adjudication No. 20685/2013, dated 13.06.2013** in the batch of appeals disposed vide **final order No.40545 to 40557/2014, dated 24/07/2014** of the Tribunal, **has not come in the present batch of appeals**. Therefore, Tribunal in this batch of appeal, is concerned only in respect of the matters, dealt by readjudication order dated 28.08.2014.

(v) The readjudication relates to the **live** consignments as well as **past** consignments. The authority in para 28 of the **impugned order dated 28.02.2014** has held that **M/s. Ravi Enterprises** is the importer of the seized goods covered by **live consignments** and in so far as the **past consignments** are concerned, in **para 36** of his order he held that there shall be joint liability of **M/s. Ravi Enterprises** and others.

(vi) So far as **provisional release of the live consignments** is concerned, the parties were before the Hon'ble High Court of Madras, challenging the seizure of the goods praying for provisional release thereof since request for the same was pending before the adjudicating authority from 23.04.2010. Consequent upon direction of the Hon'ble High Court of Madras made on **13.08.2010,** the provisional release application was disposed by Adjudicating Authority **in favour of the parties** vide **Order No.13150/2010, dated 08.10.2010**. However such order was challenged by Revenue before Tribunal. In disposing such appeal, Tribunal **vide Final Order No.730-735/2011, dated 27.06.2011** remanded the matter to the original authority for passing fresh orders after taking into consideration the report of the DRI. When the authority failed to implement order of Tribunal, the parties again approached the Hon'ble High Court for implementation thereof. Hon'ble High Court vide **Writ Petition No.29100 of 2011, disposed on 12.09.2012** directed the original authority to implement its order.

(vii) Pursuant to the direction of the Hon'ble High Court and Tribunal's order dated **27.06.2011**, learned adjudicating authority rejected prayer for provisional release in terms of the **Order No.19798/2012 dated 22.11.2012**. That order was challenged along with O-I-O **No.20684/2013 dated 12.06.2013** before Tribunal in a batch of 22 appeals disposed by the Final Order **No.40105-40126/2014** dated **22.01.2014** as aforesaid.

2.2 Explaining the *modus operandi* of the parties, Shri Derrick explained that all the appellants for whom he appears are high sea sellers. **M/s. Ravi Enterprises** who is respondent in the Revenue's appeal No.**C/42739/2014** was the importer. M/s. **Patel carrier Transport service** and **Vijay Suresh Shah of Patel** in appeal nos. **C/42625/2014 & C/42626/2014** respectively were carriers. **Shreepal Silk & Sarees** and **M.Jiju silks in appeal No.C/40026/2015 and C/40027/2015 respectively** are **high sea sellers**. Parties viz., **R.Senthilkumar** and **Manjunatha** Shipping services are **CHA,** who are in appeal nos.**C/40030/2015 and C/40033/2015**. Parties Viz., **Sr & Co and Balaji International** in appeal nos.**C/40034/2015 and C/40035/2015** respectively are **high sea sellers**.

2.3 It was further explained by him that although there was direction to the adjudicating authority by Tribunal by its **order darted 22.01.2014** firstly to determine **ownership of** the goods, the adjudicating authority failed to so do so. The second direction to that authority was to determine duty liability, interest and penalty. But he failed to act in such sequence. Accordingly, the **impugned readjudication order** dated **28.08.2014** was passed arbitrarily and has become unsustainable.

3. **Shri Narayan R. Panicker**, learned Advocate appearing on behalf of the respondent **M/s. Ravi Enterprises** submitted that his client supports the **re-adjudication order** dated **28.08.2014** and prayed for leave of absence against Revenue appeals. He expressed that, he having difficulty to represent on 11th August, 2016, his attendance may be dispensed. Against such proposition, he was categorically enquired as to whether he is under instruction of his client for no representation further against appeals of Revenue since Revenue had not commenced its argument, his reply was that he is

under instruction of his client to only support readjudication order for which his attendance on other days may be dispensed.

4. Record revealed that there was no high sea sale agreement filed by any of the parties and following deficiencies were also noticed:-

(i) O-I-O No.15130/2010, dated 08.02.2010 was not on record.

(ii) The application and orders relating to provisional release of the goods was not available on record.

(iii) The orders passed by Hon'ble High Court dated 13.08.2010 and 12.09.2012 are not on record.

Learned counsel Shri Derrick was directed to provide copies of the above documents on the subsequent date of hearing. Accordingly matter was adjourned. However no such documents came up to record except high sea sale agreements.

5.1 **Shri B. Satish Sundar,** learned advocate appearing on behalf of the appellant **M/s. S.R & Co.** in appeal no.**C/40034/2015**, **M/s. Balaji International** in appeal no.**C/40035/2015**, **M/s.Manjunatha Shipping Services Pvt. Ltd.** in appeal no.**C/40033/2015** and **R. Senthil Kumar** in appeal no.**C/40030/2015** submitted that the **first two** appellants are **high sea sellers** and **other two** appellants are **CHAs**. Revenue is in appeal against M/s. S.R & Co. and M/s. Balaji International in appeal No.C/42743/2014 and C/42750/2014 respectively for levy of penalty under section 114A.

5.2 . The authority below has taken inconsistent view [in **para 28** of the readjudication] order holding that **M/s. Ravi Enterprises** was the **importer** of the offending goods in **so far as the live**

consignments are concerned and just **opposite view** was taken in respect of the **past consignments** in **para 36** thereof, holding that the high sea sellers were *de facto* co-importers. Such a double standard approach of the adjudicating authority has resulted in failure of justice. The beginning sentence of para 36 of the readjudication order demonstrates that **M/s. Ravi Enterprises** was the importer by virtue of filing of the bills of entry having advance authorization in its name. But investigation brought out that goods were ultimately cleared by high seas sellers as is apparent from para 36 of the readjudication order.

5.3 Tribunal in its remand order dated **22.01.2014** directed that readjudicating authority has to first determine **ownership** of the goods and thereafter he shall determine the liability. But that authority failed to act in such order. He rather passed the impugned order arbitrarily.

5.4 Placing **para 28** onwards of the readjudication order, he pointed out that there was lack of proper appreciation of the evidence and improper evaluation thereof for which the authority came to different Conclusion in respect of similar imports made in past and present (live) while Parties in all such consignments were common. He brought out in that para that the goods were **seized from M/s. Ravi Enterprises**. Therefore, high sea sellers, who are the appellants, namely, **M/s. S.R. & Co. and M/s. Balaji International** cannot be held to be the importers under any circumstances in respect of both live and past consignments.

5.5 Placing **para 36** of the readjudication orders, he submitted that when the adjudicating authority **relied on the finding of the**

previous adjudicator made in his order dated 12.06.2013, he erred in law without application of his independent mind. This is also apparent from Para 20 of the impugned order. The same **M/s. Ravi Enterprises**, who was found to be importer for **live consignments** on plea of money trail of the high sea seller, was held otherwise in respect of **past consignments.**

5.6 Challenging the maintainability of the appeal, learned counsel submitted that the adjudication has been based on the show-cause notice issued by DRI **prior to 08.04.2011.** That authority had no jurisdiction to do so, following the ratio laid down by the apex court in the case of **Syed Ali reported in 2011 (265) ELT 17 (SC).** Such ratio was applied by Tribunal in the case of **Hemachand Gupta & Sons Vs. Commissioner of Customs, New Delhi reported in 2015 (330) ELT 161 (Tri.Del),** and held that the issuance of SCN and adjudication made by DRI **prior to 08.04.2011 was without Jurisdiction**. Revenue went in appeal to Supreme Court against such decision, but withdrew the same to file an appeal before Hon'ble High Court of Delhi. But no such appeal has yet been filed before Hon'ble High Court in absence of any contrary evidence led by Revenue in this regard.

5.7 Learned counsel relied on the decision in **Sri Chamundi Moped Ltd. Vs CSI Trust Association, CSI, Cinodsecretriat, Madras reported in 1992 AIR 1439, 1992 SCR (2) 999** to submit that in absence of reversal or stay of decision of Tribunal by a higher Court, that reaches to finality. Accordingly decision of the Tribunal in Hemachand Gupta's case reached to finality. Elaborately placing para 10 and 11 of the decision in *Hemachand Gupta* case, it was his submission that lack of jurisdiction by DRI to issue show cause notice makes the adjudication *ab initio* void. Present adjudication proceeding being related to the period **prior to 08.04.2011,** the DRI had no jurisdiction to issue the show-cause notice. Thus Revenue's appeals against the respondents are not maintainable. Notice issued under section 28 of Customs Act, 1962 being without jurisdiction, assesses are not liable to any consequence of readjudication. Similarly that there is no provision in law to demand duty jointly and severally following the decisions made in:

(i) *Collector of Customs, Cochin Vs Trivandrum Rubber Works Ltd.* reported in *1999 (106) E.L.T.9 (S.C.).*

(ii) *Commissioner of Customs, Bangalore Vs Dinesh Chhajer* reported in *2008 (223) E.L.T. 436 (Tri.-Bangalore).*

(iii) *Commissioner of Customs, Bangalore Vs Dinesh Chhajer* reported in *2014 (300) E.L.T.498 (Kar.).*

(iv) *K.N. Parekh & 7 Ors. Vs Commissioner of Customs (Airport), Chennai* vide *Final Order Nos.1288 to 1295./2008, dated 17.11.2008* in Appeal Nos.*C/169 to 172/2001 and C/321 to 324/2002.*

(v) *Shree Chamundi Mopeds Ltd. Vs Church or South India Trust Association , CSI, Cinodsecretariat, Madras* reported in *1992 AIR 1439, 1992 SCR (2) 999.*

(vi) *M/s. B.P.L. Ltd. & Ors. Vs R. Sudhakar & Ors.* reported in *Appeal (civil) 2999-3011 of 2004.*

5.8 Arguing on behalf of the **CHAs,** Shri Sathish Sundar submitted that they were not contributory to the offence alleged in absence of their conscious or deliberate involvement brought to record. Therefore **No penalty** on them is imposable **under section 112 (a) of the Customs Act, 1962**. There is **no positive finding** as to their culpability before imposing penalty. That being absent, penalty is not imposable. They have neither acted malafide nor made breach of law. He further submitted that appeals of the two CHAs have also arisen out of SCNs issued without jurisdiction for which, the readjudication order against them is liable to be set aside.

5.9 Learned counsel further submitted that the jurisdiction issue in respect of the notice issued by DRI **before 08.04.2011** has been resolved by the Hon'ble High Court of Delhi in **Mangli impex Vs. Union of Inida-2016 (335) E.L.T. 605 (Del.)** following the ratio laid down in **Syed Ali's** case. Even though **Mangli impex** judgment has been stayed **by the apex court by order dt. 01.08.2016,** the ratio thereof is not stayed. Accordingly decision in *Mangli impex* holds the field.

6.1 Arguing on Jurisdiction issue, on behalf of **Subham Enterprises** in Appeal No. **C/42616/2014, Shreepal Silks** Appeal No. **C/40026/2015** and one **Jiju Silks** Appeal No. **C/40027/2015** learned counsels **Shri Hari Radhakrishnan and Shri Derrick Sam** submitted that **all the three** appellants are **high sea sellers** of the impugned goods. **Subham Enterprises** is dealt in the readjudication order in respect of **live and past** consignments. **M/s. Shreepal Silks** is dealt only in respect of **live** consignments and **M/s. Jiju Silks** is dealt only in respect of **past** consignments. Their proceedings having been emanated from the SCN issued by DRI without Jurisdiction as argued elaborately by **Shri B. Satish Sundar, Advocate,** such proceedings are also void.

Customs, Excise & Service Tax Appellate Tribunal

6.2 When **M/s. Subham Enterprises** and **M/s. Shreepal Silks** claimed ownership of the goods for provisional release of the live consignments filing application **dated 23.4.2010** before adjudicating authority. That authority passed provisional release order in their favour on **8.10.2010** (Ref. page 19 of the paper book filed) initially on direction by High court. But such order was reversed by the Authority on filing of appeal when Revenue appealed against that order to Tribunal and Tribunal remanded the matter on 27.06.2011. He Abruptly he adjudicated the matter by **order No.2068/2013,** dated **12.06.2013** denying the appellant's ownership over the imported goods and imposed penalties. However such adjudication was set aside by Tribunal on 22.01.2014 for consideration with two directions: (1) to determine the ownership of the goods; and (2) to determine the duty liability as well as other consequence of law. However **learned adjudicating authority failed to decide on the provisional release of the goods** first. In the process, he readjudicated the matter without granting opportunity of hearing to the appellant to argue on merit. Such defiance to the order of Tribunal has made the readjudication unsustainable.

6.3 They submitted that the **re-adjudication proceeding held** that **M/s Ravi Enterprises** was the **importer** of the goods while that was not really so. The authority held that **in so far as the past imports are concerned,** that concern was the importer and the three high sea seller-appellants were *de facto* co-importers in respect of live consignments even though **M/s. Ravi Enterprise** was importer. **Thus, the adjudicationg authority acted erroneously with two**

divergent views in respect of live consignment and past consignments making a mockery of the issues.

6.4 Penalty was imposed on live consignment even though the goods were in the custody of the customs. That is contrary to law. When the goods were confiscated under section 111 (d), (n) and (o) of the Customs Act, 1962, the authority should have brought out that there was a prohibition or mis-declaration as well as violation of the law. Without any such element, being present, invoking of all the three sub-clauses of section 111 is unwarranted and un-called for. The authority mechanically imposed penalty in gross violation of rule of justice.

6.5 So far as penalty on the high sea sellers is concerned, Revenue failed to show violation of law made by them causing prejudice to Revenue. Therefore, the penalty levied on them is without any basis. Further the joint and several liability concept of the adjudicating authority in the re-adjudication order is contrary to the following decisions of the Tribunal :-

1.	Shiv Kumar Agarwal & 2 Ors. Vs Commissioner of Customs (Preventive), Mumbai vide Final Order No. A/626-628/13/CSTB/C-I dated 09.04.2013 in Appeal Nos. c/759,806 & 904/03	
2.	J.K. Pharma Vs. Commissioner of Customs(Imports), Mumbai [2004(166) E.L.T. 407 (Tri-Mum)	
3.	Bajaj Trading Vs. Commissioner of Customs (E.P), Mumbai [2006 (206) E.L.T. 537 (Tri-Mum)]	

4.	Sree Aravindh Steels Ltd Vs. Commissioner of Central Excise, Trichy [2007(216) E.L.T. 332 (Tri-Chennai)]	
5.	Famous Textile Vs. Commissioner of Central Excise, Rajkot [2005 (190) E.L.T. 361 (Tri-Mum)]	

6.6 On the aforesaid premise, the prayer of the learned counsels is that both on maintainability as well as on merit, the appellants should succeed and they being the importer, they are entitled to release of the goods covered by the live consignment without any adverse consequence of law.

6.7 On behalf of **Sri Mudimannan,** Adv, Sri Derrick says that he is under instruction in Revenue's **appeal No.42742/2014 and C/42744/2014** to make similar arguments in respect of section 114 A as well as on maintainability of adjudication as made herein before. That may be considered.

7.1 On behalf of Revenue, learned DR Shri K. Veerabhadra Reddy submitted as under:

(A) That in view of various material facts and evidence of amendment of IGM came to record, readjudication was made holding that M/s. Ravi Enterprises was importer in respect of live consignments since he filed bill of entry relating to the impugned goods.

(B) Similarly, on the basis of the materials evidences gathered from various quarters during investigation, the Authority below reached to the conclusion that **M/s. Ravi Enterprises** as well as **high sea sellers had colluded to defraud Revenue** availing duty exemption on the basis of fraudulent advance authorizations obtained by **M/s. Ravi Enterprise** which were found by JDGFT to be fake.

(C) That in view of the collusion of the parties, the authority held that **M/s. Ravi Enterprises** and high seas sellers were jointly and severally liable for the duty liability since the high sea sellers were *de facto* co-importers of the offending goods in the past.

7.2 The live consignments related to **8 bill of entries** and **past consignments related to 13 bill of entries**. In few bill of entries of the live consignments, there was misdeclaration as to the grade of raw silk imported which was established by laboratory test report drawing samples from the respective consignment. Such conclusion of the laboratory remained unrebutted by the parties. Added to this, the questionable *modus operandi* of the parties came to record bringing them into the fold of law for appropriate action.

7.3 There were nine high sea suppliers in respect of live consignments and past consignments, who are as under:-

TABLE - 3

Sl.No.	Name of the party	Appeal Nos.
01	M/s. Subham Enterprises	C/42616/2013
02	M/s. Shreepal Silks & Sarees	C/40026/2015
03	M/s. M. Jiju Silk Mills	C/40027/2015
04	M/s. S.R. & Co.	C/40034/2015
05	M/s. Balaji International	C/40035/2015
06	M/s. Navbharat Silk	C/42747/2014
07	M/s. Maharaja Impex	C/42748/2014
08	M/s. Prachi Silks	C/42744/2014
09	M/s. Trimurti International	C/42742/2014

7.4 All the parties mentioned in Sl.No.1 to 7 submitted their claim, praying for release of the goods. So far as **M/s. Prachi Silks** and **M/s. Trimurti International** are concerned, when they came to the Tribunal with belated appeal, **their appeals have been dismissed for no condonable delay**. However, **Revenue is in appeal** against them **for imposition of penalty under section 114A of** the Customs Act, 1962 since proposal for such imposition was in the SCN.

7.5 The parties in Sl.No.1 to 5 of the Table - 3 above who are in appeal and have prayed to clear of the goods in their favour without upholding the order of readjudication passed in favour of **M/s. Ravi Enterprises** who has been held to be importer for live consignments. Revenue is also in appeal against them praying for imposition of penalty on them.

7.6 The *de fecto* co-importers are the following parties as tabulated in TABLE – 4 below:-

TABLE - 4

Sl.No.	Name of the *de facto* importers	Appeal Nos.
01	Kalpesh Patel	C/42745/2014
02	Vishal Janak Agarwal	C/42746/2014
03	Ramanand Surekha	C/42751/2014
04	Rajesh Bangawala	C/42752/2014

7.7 The high sea sellers mentioned above have sold the goods to **M/s. Ravi Enterprises** on high sea as per agreements and the sample agreement copy available at pages **1 to 6 of the paper book** filed by learned counsel Shri Derrick Sam in the case of **M/s. Subham Enterprises and M/s. Shreepal Silks & Sarees.**

7.8 Learned DR submitted that the high sea sellers did not disclose what was the sales consideration and commercial terms and conditions. He mentioned that one of the Chinese supplier **M/s.**

Sichuan Shunchen Silk Co. Ltd., although was in appeal before Tribunal earlier in appeal **No.C/40396/2014,** they are not in appeal before the Tribunal in this batch of appeals.

7.9 Revenue's grievance in appeal against **M/s. Ravi Enterprises**, who is held to be the importer by the learned adjudicating authority is that the said authority did not levy penalty on that concern under section 114 A of the Customs Act, 1962.

7.10 According to Revenue, there is nothing on record to show the terms of contracting parties with the Chinese suppliers. No payment details in respect of supplies were brought to record by them. There is no evidence of any payment made by **M/s. Ravi Enterprises** to high sea sellers.

7.11 **M/s. Ravi Enterprises** claiming to be advance license holders, made clearance of past consignments. But, when it was attempting to clear the **live consignments,** pretending to be an advance authorisation holder, such authorisation was found to be fake and fraudulently obtained for which that was cancelled by JDGFT by order dated **31.05.2010**. That concern had neither installed any machinery at the place claimed to be place of manufacture nor carried out any manufacturing activity. **No appeal has been filed by that Respondent against the JDGFT's order.** It is also on record that **past consignments have not gone to the so called place of manufacture of M/s. Ravi Enterprises.**

7.12 In terms of the first remand order, Tribunal intended that the real importer is to be determined by adjudicating authority. That was done by him. Therefore, there is no defiance to the Tribunal's direction. Learned Authority properly determined the liabilities of the respective parties, upon determination of the status of the importer. There is no concept of ownership in the Customs law for clearance. It is only necessity of law to determine the importer for clearance.

7.13 There was no details of payment given by the importer **M/s. Ravi Enterprises** to the high sea sellers. The **high sea sellers** were importer and they **colluded with M/s. Ravi Enterprises** for the purpose of clearance of the goods duty free using fake advance authoristation, defrauding customs. Their collusion rendered them to be jointly and severally liable to duty, interest and penalty under law.

7.14 Documents like amended IGM and the bills of entries came to record of Customs. Therefore **M/s. Ravi Enterprises** was permitted to make clearance of the live consignments. Hence the question of **provisional release does not arise** in respect of such consignments because of no bill of entry filed by high sea sellers. Therefore there is no need by this Bench to decide on the provisional release aspect.

7.15 Para 3.1 to 3.4 of show-cause notice shows that **M/s. Ravi Enterprises was not in existence**. But the IEC issued by JDGFT shows that M/s. Ravi Enterprises was the importer and filed bills of entry. There is no provision in Customs law to determine ownership of goods by the Customs authority. The **only provision in law is to entertain an importer for the purpose of clearance** of the imported goods. The authority had materials like amended IGM and bills of entry filed by **M/s. Ravi Enterprises** to order clearance to the importer.

7.16 The high sea sellers were **conscious and had intimate involvement in the fraud designed against Revenue.** Revenue loss was caused by them in concert since they were aware that M/s. Ravi Enterprises was holder of fraudulent advance authoritsation, which was cancelled by JDGFT. They all have defrauded customs making duty-free clearances in past on the basis of fake advance authorization and were attempting to clear the live consignment.

7.17 On all other aspects, learned DR supported the investigation result and readjudication order, Praying that all Revenue appeals are for imposition of penalty on Respondents under section 114 A of the Customs Act, 1962. Specific prayer was made in **para 7 of ground of appeal** of Revenue for such imposition in view of allegation in that respect made in **para 31.15 of the Show-cause notice**. According to Revenue, to impose penalty, elements of law in that regard are present since all the parties colluded to defraud Revenue and they caused huge loss to exchequer using fake authorization in the name of M/s. Ravi Enterprises a non-existent concern who made duty-free clearances.

7.18 Arguing against the CHAs, who are in appeal, learned departmental representative says that they were actively and consciously involved in the fraudulent imports making mis-declaration of the **grade of the chinese silk imported as well as fraudulent advance authorization used** for clearance thereof duty-free. Accordingly they were rightly penalized. To support his contention, learned departmental representative placed **para 7.3 to 7.6 of SCN**.

7.19 Repelling all the argument of the learned counsels, learned DR submitted that the **earlier O-I-O dated 12.06.2013 having merged in the order of remand passed by the Tribunal on 22.01.2014, liability of parties have been determined in the**

re-adjudication, for which all pleas of the assesses fails and their appeals being devoid of merit, are liable to be dismissed. He prayed that readjudication order in so far as the live consignments is concerned, has been passed in accordance with law. Revenue being aggrieved due to no imposition penalty under section 114 A, is in appeal which may be allowed.

8. While hearing was made, survey was made to the provisions of Customs Act, 1962 to ascertain whether the concept of "ownership" has been recognized by that law. It is found that section 145 of that Act has recognized such concept and that section reads as under:-

> "**SECTION 145. Owner, etc., to perform operations incidental to compliance with customs law.** - All operations necessary for making any goods available for examination by the proper officer or for facilitating such examination shall be performed by, or at the expense of, the owner, importer or exporter of the goods, as the case may be."

It is also noticed that the concept of "ownership" appears in section 12 of the Customs Act, which reads as under:-

> "124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—
>
> (a) is given a notice in 1[writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
>
> (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
>
> (c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and

> the representation referred to in clause (b) may at the request of the person concerned be oral."

9.1 In rejoinder, learned counsel Sri Derrick submitted that in so far as the prayer of Revenue for imposition of penalty under section 114 A of the Customs Act, 1962 is concerned, that issue no more arises **because of the reason stated by the learned adjudicating authority in his previous order No.206484/13, dated 12.06.2013**. Accordingly, no initiation of further penalty was warranted in the impugned readjudication order. Section 114A is not applicable when there is no duty liability at all on the high sea sellers. There is no joint and several liability concept in Customs law, for which, readjudication suffers from legal infirmity. If at all any liability is incurred by any importer, that is only recoverable from him and from none else.

9.2 Shri Derrick repeatedly objected to Revenue's plea of no provisional issue can be pursued further, stating that there was violation of natural Justice when no order was passed in that regard. The authority should have passed provisional release order first before going into the merits of the case. The readjudication has therefore travelled beyond the Tribunal's direction. The evidences of the past consignment cannot be used for the live consignments and every evidence is to be tested in the given circumstances. **M/s. Shreepal Silks & Sarees** was not involved in the past consignments, for which, no readjudication against that concern was warranted. The value of the goods under high sea sale agreement was for invoice value + 2%. Revenue has omitted to take note of such commercial term. There was no return of documents by bank to any high sea seller except one supplier who was in a batch of appeals in the previous remand order dated 22.01.2014 passed by Tribunal. Therefore, the importers are high sea sellers only and **M/s. Ravi Enterprises was not at all an importer**. Accordingly high sea sellers are entitled to the clearance of the live consignments. Therefore penalty is not at all leviable on the high sea sellers under section 112 (a) of the Customs Act, 1962 for the reason that they had sold the goods to **M/s., Ravi Enterprises** and no more answerable to law after high sea sale agreement was made.

10. Heard both sides and perused the records.

11. **M/s. Patel Carriers in Appeal No.C/42625/2014 and Vijay Suresh Shah, Patel Carrier Transport service in Appeal No.42626/2014,** although, have filed appeal, neither appeared in person nor **represented by any authorised representative**. According **their appeals are dismissed**.

12. Two important preliminary issues arose in view of the aforesaid rivalry submissions of the parties and background of the readjudication. The first one is whether readjudication is maintainable when jurisdiction of the D.R.I to issue SCN is challenged and secondly whether the readjudication was made adopting finding of the original adjudication order as is apparent from paras-36 & 20 of the impugned order.

13. So far as the second issue is concerned Justice ordains that readjudication ought to have been made by learned Adjudicating Authority independently on the basis of the materials on record, evidence and law applicable to the given facts and circumstances of the case, applying direction of the Tribunal, without adopting the

original adjudication findings. Therefore to that extent the impugned order calls for remand for fresh adjudication on merit in respect of the appeals remanded by this order granting fair opportunity of hearing to both sides and making independent enquiry to record finding. However learned Adjudicating Authority should note that not only past consignment were cleared on the basis of fake and fraudulent advance authorization filed by **M/s. Ravi Enterprise** but also live consignments were attempted to be cleared on that basis and such material fact remained unrebutted all through and even before Tribunal.

14. So far as the first preliminary issue on jurisdiction is concerned, that point involves question law which is dealt in succeeding paragraphs here under.

15.1 Jurisdiction of the Officers of **Directorate of Revenue Intelligence (DRI)** was challenged raising the question whether they were empowered to issue show cause notice under Section 28 of the Customs Act, 1962 (hereinafter referred to as "the Act") **prior to 08.04.2011 and even after** enactment of sub-section (11) thereto w.e.f. 16.09.2011. Section 28 of the Act underwent amendment w.e.f. 08.04.2011 and the law thereunder as on that date reads as under:

> *"28. Recovery of duties not levied or short-levied or erroneously refunded.- (1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons or collusion or any wilfulmis-statement or suppression of facts,-*
>
> *(a) The proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest 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;*
>
> *(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.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been paid levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
(a) collusion; or
(b) anywilfulmis-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 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) Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilfulmis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to twenty-five per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of

Customs, Excise & Service Tax Appellate Tribunal

duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of Sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice in respect of cases falling under sub-section (4).

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation 1 – For the purposes of this section, "relevant date" means,-

(a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

Explanation 2.- For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received".

15.2 Sub-section (11) was enacted in September, 2011 and that came into force from 16.09.2011. The said sub-section reads as under:

"(11) *Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of Section 4 before the 6th day of July 2011 shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this Section.*

15.3 Emphasis was made in the course of hearing submitting that **even after** incorporation of **sub-section (11) to Section 28** of the Act, the **Explanation 2** appearing under that section operates against the proceedings initiated by DRI **issuing show cause notices prior to 08.04.2011** alleging that non-levy short levy or erroneous refunds made. That **explanation** says that the cases of above nature initiated by DRI officers **prior to 08.04.2011** shall continue to be governed by the provisions of Section 28 as it stood immediately before the date of assent of Finance Bill, 2011 i.e. 08.04.2011. However application of said explanation was not barred to be applicable to the cases of above nature. Therefore section 28 (11) deals with cases of post 08.04.2011 only but not prior to that. Even though sub-section (11) says that the persons appointed as Officers of

Customs under section 4(1) of the Act before 06.07.2011 shall be deemed to have been and always have been **"proper officer"** for the purpose of section 17 and 28 of the Act, the proceedings initiated by DRI officers lack jurisdiction when Para 70.1 of the judgment of the Hon'ble High Court of Delhi in ***Mangli Impex - 2016 (335) ELT 605 (Del.)*** is read. The said para reads as under:

> *"70.1 The net result of the above discussion is that the Department cannot seek to rely upon Section 28(11) of the Act as authorising the officers of the Customs, DRI, the DGCEI etc. to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to 8th April 2011 if, in fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such SCNs since they were not 'proper officers' for the purposes of Section 2(34) of the Act and further because Explanation 2 to Section 28 as presently enacted makes it explicit that such non-levy, short-levy or erroneous refund prior to 8th April 2011 would continue to be governed only by Section 28 as it stood prior to that date and not the newly re-cast Section 28 of the Act".*

15.4 According to the learned counsels, the law laid down by Hon'ble High Court of Delhi is that the proceedings initiated under Section 28 issuing notice by DRI **prior to 08.04.2011 still suffer from legal infirmity** even though subsection (11) was enacted in section 28 of the Act since the law as that was existing before 08.04.2011 shall apply to those cases following the ratio laid-down in ***Sayed Ali's*** case ***(2011) 3 SCC 537: 2011 (265) ELT 17 (SC)***. Placing para 70.2 of the ***Mangli Impex*** it was emphasized by them that Section 28(11) **has not conferred power on DRI Officer before 08.04.2011** to be **"proper officer"** for the purpose of section 17 and 28 of the Act. The said para reads as under:

> *"70.2 Section 28(11) interpreted in the above terms would not suffer the vice of unconstitutionality. Else, it would grant wide powers of assessment and enforcement to a wide range of officers, not limited to customs officers, without any limits as to territorial and subject matter jurisdiction and in such event the provision would be vulnerable to being declared unconstitutional".*

15.5 It was further emphasized that on reading of para 70.1 and 70.2 of ***Mangli Impex*** judgment, it may be appreciable that by no means the defective show cause notices issued by DRI officers are curable **prior to 16.09.2011 [on which date sub-section (11) came into force]. Therefore, section 28 amended with effect from 08.04.2011 declares that notice issued by DRI officers prior to 08.04.2011 are without jurisdiction.** According to them, on the conjoint reading of section 2(34) and Section 28 leads to construe that there should be specific power conferred by law on the DRI officer under Section 28 to issue notice. **There was no such authority conferred on them prior to 08.04.2011.** Therefore, Hon'ble High Court of Delhi has held that what that was not the conferred power cannot be assumed by DRI under Section 28 **before 28.04.2011** in absence of statutory conferment.

15.6 While appellants raised above preliminary issue on the law applicable to the case arguing that **even though *Explanation 2*** to Section 28(10) of the Customs Act, 1962 (in short "the Act") was introduced to the law with effect from **8.4.2011,** that does not make any difference to the law laid down by Apex Court in **Commissioner of Customs Vs. Sayed Ali reported in 2011 (265) ELT 17 (SC)** which still holds the field declaring that officers of **DRI, DGCEI and SIIB were not "proper officer"** for the purpose of Section 28 of the Act and had no power to issue show cause notice explanation 2 well explains the position of law that the non-levy, short-levy or erroneous refund before the date on which the Finance Bill 2011 receives assent of the President **shall continue to be governed by the provisions of Section 28 of the Act as it stood immediately before the date**

on which such assent is received, Revenue contends that the said *Explanation* is to be read in the manner to construe that the officers of the said Agencies at all times were **"proper officer"** even prior to **8.4.2011.**

15.7 The Hon'ble High Court of Delhi in paragraph 70.1 of the judgment in ***Mangali Impex*** reported in 2016 (335) ELT 605 (Del.) held that Department cannot seek to rely upon Section 28(11) of the Act, to contend that the **officers of customs, DRI, DGCEI etc.,** shall exercise power in relation to the cases of non-levy, short-levy or erroneous refund for the period **prior to 8.4.2011** in absence of any such power assigned to them. There was no power assigned to them to issue show cause notice since they were not **"Proper Officer"** for the purpose of Section 2(34) of the said Act. The ***Explanation 2* to Section 28** made clear that the cases of non-levy, short levy or erroneous refund prior to **8.4.2011** would continue to be governed only by section 28 as it stood prior to that date and not the newly recast section 28 of the Act .

15.8 According to the judgment in **MangliImpex** (supra), the past action of the **officers of DRI, DGCEI etc.** who were not designated as **"Proper Officer"** to issue show cause notice for the purpose of Section 28 of the Act for the period **prior to 8.4.2011 is not validated by *Explanation 2*. Legislation has not made it express that Section 28(11) which came into force from 16.9.2011 has overriding effect on *Explanation 2* to section 28(10) of the Act.** Hon'ble Court held that by reason of *Explanation*, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. But, in the present case, the *Explanation 2* introduced to Section 28(10) of the Act was clarificatory in nature which shall have retrospective effect.

15.9 It is settled position of law that when something is prohibited to be done directly that cannot be done indirectly as has been held in the case of ***Jagir Singh Vs. Ranbir Singh*** – AIR 1979 SC 381 and reiterated in ***M.C. Mehta Vs. Kamalnath and Ors***. – AIR 2000 SC 1997. According to assessees, contention of Revenue has no merit in the light of ***Sayed Ali's*** judgment and ***Mangli Impex***. The law settled in the case of ***Commissioner of Customs Vs. Sayed Ali*** (supra) by the Hon'ble Supreme Court is that an officer to be **"proper officer"** for the purpose of Section 28 of the Customs Act, 1962 has to be designated so by assigning the function of levy and collection of duty by the Board or the Commissioner of Customs. But it appears such shortcoming in the statute was cured enacting sub-section (11) to Section 28 of the Customs Act, 1962 with effect from 16.9.2011.

15.10 It may be stated that, lis begins on a date when a proceeding is initiated. Therefore, the law on that date necessarily applies to the proceedings till finality thereof as has been held in ***Hoosein Kasam Dada (India) Limited Vs. State of Madhya Pradesh &Ors***. 1983 **(13) ELT 1277 (SC).** Accordingly right to justice under that law cannot be taken away except otherwise stated by any retrospective amendment in that behalf and the right inhered in a party on the date of the lis does not extinguish without express provision of law to that effect.

15.11 It may be stated that operation of the judgment in the case of ***Mangali Impex*** (supra) has been stayed by the Hon'ble

Supreme Court in ***Union of India & Ors. Vs. Mangali Impex Ltd***. in SLP (C) No. 20453/2016 by an order dated **1.8.2016** and the Hon'ble Court is seized of the matter. Tribunal being creature of the statute, is subordinate to the Hon'ble Supreme Court and it should not overreach to the Jurisdiction of higher court following the principle laid down in ***Union of India Vs. West Coast Paper Mills Ltd***. – **2004 (164) ELT 375 (SC).** Apex Court held that once an appeal is filed before Apex Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last court cannot be said to have attained finality. Therefore once the matter has been considered for hearing on merit by the Apex Court, Tribunal is required to restrain itself as a rule of judicial discipline and go slow as well as wait for judgment of the highest court on the subject. This is also the principle emerges from the ruling of the Hon'ble High Court of Bombay in the case of ***Titanor Components Ltd. Vs. Commissioner of Income Tax*** – **2009 (238) ELT 596 (Bom.).** Accordingly, without expressing any opinion on the aforesaid preliminary issue of Jurisdiction raised by Assesses, except reiterating the law of the land and judicial pronouncement as above, we are compelled to remand the appeals hereafter state by this order, to learned Adjudicating Authority to reach to his decision on the basis of outcome of the civil appeal in Mangli Impex and granting fair opportunity of hearing to both sides shall pass appropriate order. We order accordingly.

16. At the cost of repetition, it may be stated that serious fraud being alleged by Revenue against Customs, the Authority shall

make thorough enquiry and establish his finding on the strength of evidence, to do Justice.

17. In the result:

(1) Following appeals not being represented by the appellants are dismissed.

Appeal No.	Appellant	Respondent
C/42625/2014	M/s. Patel Carrier Transport Service	CC (Sea Port-Import), Chennai
C/42626/2014	Vijay Suresh Shah	CC (Sea Port-Import), Chennai

(2) Following Revenue appeals praying for levy of penalty, not being contested by Respondents are allowed and Revenue succeeds therein.

Appeal No.	Appellant	Respondent
C/42745/2014	CC, (Sea Port-Export), Chennai-IV	Kalpesh Patel
C/42746/2014	CC, (Sea Port-Export), Chennai-IV	Vishal Janak Agarwal
C/42747/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Navabharat Silk
C/42748/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Maharaja Impex
C/42751/2014	CC, (Sea Port-Export), Chennai-IV	Ramanand Surekha
C/42752/2014	CC, (Sea Port-Export), Chennai-IV	Rajesh Bangawala

(3) Following appeals of Revenue praying for imposition of penalty and appeals of high seas sellers on the issue of maintainability as well as merit are remanded to Adjudicating Authority for readjudication in accordance with law:

Appeal No.	Appellant	Respondent
C/42616/2014	M/s. Subham Enterprises	CC (Sea Port-Export), Chennai
C/42739/2014	CC, (Sea Port-Export), Chennai	M/s. Ravi Enterprises
C/42740/2014	CC, (Sea Port-Export), Chennai	M/s. Subham Enterprises
C/42741/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Sreepal Silk & Sarees
C/42742/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Trimurti International
C/42743/2014	CC, (Sea Port-Export), Chennai-IV	M/s. S.R. & Co.
C/42744/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Prachi Silks

Customs, Excise & Service Tax Appellate Tribunal

Appeal No.	Appellant	Respondent
C/42749/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Jiju Silk Mills
C/42750/2014	CC, (Sea Port-Export), Chennai-IV	M/s. Balaji International
C/40026/2015	M/s. Shreepal Silks & Sarees	CC (Exports), Chennai
C/40027/2015	M/s. M. Jiju Silks	CC (Exports), Chennai
C/40030/2015	R. Senthil Kumar	CC (Sea Port-Export), Chennai
C/40033/2015	M/s. Manjunatha Shipping Services P. Ltd;	CC (Sea Port-Export), Chennai
C/40034/2015	M/s. S.R & Co.	CC (Sea Port-Export), Chennai
C/40035/2015	M/s. Balaji International	CC (Sea Port-Export), Chennai

(Pronounced in the open court on 14.02.2017)

D. Singh
7/2/2017
(DEVENDER SINGH)
TECHNICAL MEMBER

14-2-2017
(D.N. PANDA)
JUDICIAL MEMBER

ksr/ Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai