**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO. II**

Appeal No. C/198/2009

(Arising out of Order-in-Original No. 127/2008 dated 16.07.2008 passed by the Commissioner of Customs (Appeals), NCH, Mumbai ).

| | |
|---|---|
| Commissioner of Customs (Import), JNCH, Nhava Sheva | Appellant |

Vs.

| | |
|---|---|
| M/s Leo Overseas<br>M/s Ariza Impex<br>M/s Huda Overseas<br>Mahesh Lohkare<br>M/s Raj Agencies<br>Rajesh Jain<br>M/s Kindship Agency Pvt. Ltd. | Respondents |

Appearance:

| | |
|---|---|
| Ms. Trupti D Chavan, AC (AR) | for Appellant |

| | |
|---|---|
| None | for Respondents |

CORAM:

**HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)**
**HON'BLE SHRI RAJU, MEMBER (TECHNICAL)**

Date of Hearing: 12.03.2018

Date of Decision: 16.05.2018

ORDER NO. **A/86378 / 2018**

***Per: Raju***

This appeal has been filed by Revenue against order of Commissioner in the case of Mahesh Lohkare and others.

2. Learned AR for the Revenue pointed out that the Commissioner in para 8 (vii & viii) of the order has observed as follows: -

> *"(vii) M/s Ariza Impex, M/s Huda Overseas and M/s Leo Overseas and its controlling person Mr. Mahesh Lohkare have short paid duty amount of Rs.17,88,304/-, Rs.10,21,701/- and Rs.13,85,390/- respectively, by willful mis-statement and suppression of true facts, as M/s Ariza Impex, M/s Huda Overseas and M/s Leo Overseas are also liable to penalty under Section 114A of the Customs Act, 1962.*
>
> *(viii) M/s Raj Agencies and its controlling person Mr. Rajesh Jain have short paid duty amount of Rs.2,58,211/- by will ful mis-statement and suppression of true facts, as M/s Ariza Impex, M/s Huda Overseas and M/s Leo Overseas are also liable to penalty under Section 114A of the Customs Act, 1962."*

However, in the order portion, the penalties under Section 114A have not been imposed. He argued that having held the respondent guilty of offence under Section 114A, the Commissioner could have imposed penalties.

3. No one appeared for the respondents.

4. We have gone through the submissions made by the AR and the documents on record. We find merits in the argument of the Revenue. It is seen that the Commissioner has made specific observation regarding the offence of the respondent under Section 114A. However, there is no order imposing or dropping penalties against the said respondent. Thus, we find that the impugned order is incomplete. The impugned order in so far as it relates to

penalties under Section 114A is set aside and the matter is remanded to Commissioner to issue order in respect of penalties under section 114A.

5. Appeal is allowed by way of remand in the above terms.

(Pronounced in Court on 16.05.2018)

| | |
|---|---|
| **(Ramesh Nair)** | **(Raju)** |
| **Member (Judicial)** | **Member (Technical)** |

Sinha