CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 748 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

M/s. Usha Shipping Agency **Appellant**
Room No.22, Bhanushali Building,
2nd floor, 35, Mint Road,
Mumbai 400 001.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 990 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

M/s. Nikhil Shipping Agency **Appellant**
'Gill Haze Apt.', 'C' Wing, Flat No.107,
Lourdes Colony, Orlem,
Malad (W), Mumbai 400 064.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 991 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Edna Bhimsen Singh **Appellant**
'Gill Haze Apt.', 'C' Wing, Flat No.107,
Lourdes Colony, Orlem,
Malad (W), Mumbai 400 064.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 992 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Ugrasen Singh **Appellant**
A/10, Sarita Housing Society,
Vishwa Karma Nagar,
Mulund (W), Mumbai 400 080.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 993 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Bhimsen Singh Bhagat, **Appellant**
'Gill Haze Apt.', 'C' Wing, Flat No.107,
Lourdes Colony, Orlem,
Malad (W), Mumbai 400 064.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 997 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Sultan Kamruddin Dharani **Appellant**
701/702, Royal Manor,
St. Rock Road, Behind Mehboob Studio,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 999 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Deen Dayal Didwania **Appellant**
172, Kshitij Apartment,
Nepean Sea Road,
Mumbai 400 036.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 1000 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Navneet Didwania **Appellant**
172, Kshitij Apartment,
Nepean Sea Road,
Mumbai 400 036.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 1001 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Satinder Singh **Appellant**
C/o. M/s. Guru Kripa Logistic Pvt. Ltd.,
Room No.35, 80/84, Nandlal Jain Marg,
Danabunder, Mumbai 400 009.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

WITH

Customs Appeal No. 1002 of 2012

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 18.07.2012 passed by Commissioner of Customs (Preventive), Mumbai)

Dhirendra Singh **Appellant**
Murtuza Chambers, 2nd floor,
Nandlal Jain Road,
Danabunder, Mumbai 400 009.

AND

Customs Appeal No. 86103 of 2013

(Arising out of Order-in-Original No. CCP/ADJ/APSS/02/2012 dated 08.04.2010 passed by Commissioner of Customs (Preventive), Mumbai)

Mahesh Manilal Maru **Appellant**
501, Baruch Sadan, Baruch Street,
Masjid Bunder, Mumbai 400 009.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

Vs.

Commissioner of Customs (Prev.), Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

Appearance:

Shri Anil Balani, Advocate, in appeal C/748/12
Shri Hemant H. Dave, Advocate, in appeals C/990, 991, 992, 993/12
Shri Roshil Nichani, Advocate, in appeal C/997/12
Shri S.N. Kantawala, Advocate, in appeals C/999, 1000/12
Shri Arun H. Mehta, Advocate, in appeals C/1001, 1002/12
Shri H.R. Shetty, Advocate, in appeal C/86013/13

Shri K.K. Srivastava, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/**85529-85539/2020**

Date of Hearing: 11.02.2020
Date of Decision: 11.02.2020

PER: SANJIV SRIVASTAVA

These eleven appeals are directed against order in original No CCP/ADJ/APSS/02/2012 dated 18.07.2012 of the

Commissioner Customs (Preventive), Mumbai. By the impugned order, the Commissioner has held as follows:

"The goods listed in Annexure –I to the Show Cause Notice are liable for confiscation under Section 111(d) of the Customs Act, 1962. As the goods are not available for confiscation, no order for confiscation is passed. However, Customs duty due amounting to Rs 1,59,40,455/- (Rupees One Crore Fifty Nine Lakhs Forty Thousand Four Hundred and Fifty Five only) on the goods which were cleared against Advance Licences and DEEC Books as per Annexure – I attached to the show cause notice is recoverable in terms of conditions of the Notification No 204/92-Cus, as amended read with Section 143A of the Customs Act, 1962, from the de facto importers viz. Mr Deen Dayal Didwania and Mr Navneet Didwania. I therefore order for recovery of Customs duty amounting to Rs 1,59,40,455/- (Rupees One Crore Fifty Nine Lakhs Forty Thousand Four Hundred and Fifty Five only) from Mr Deen Dayal Didwania and Mr Navneet Didwania, along with interest as applicable. I direct the noticees viz Mr Deen Dayal Didwania and Mr Navneet Didwania to pay the duty amount forthwith. I impose the below mentioned penalties on the following noticees under Section 112(a) of the Customs Act, 1962.

Sr No	*Name of the Noticee*	*Penalty in Rupees (Rs)*
1	*Mr Deen Dayal Didwania*	*Rs 1,50,00,000 (Rs One Crore Fifty Lakhs Only)*
2	*Mr Navneet Didwania*	*Rs 1,50,00,000 (Rs One Crore Fifty Lakhs Only)*
3	*Mr Sultan Kamruddin Dharani*	*Rs 10,00,000 (Rs Ten Lakhs only)* *(Rs 50,000/- deposited vide C No 2222 dated 20.10.1999 in terms of CESTAT order dated 27.07.1999 are ordered to be appropriated)*
4	*M/s Nikhil Shipping Agency CHA No 11/984*	*Rs 5,00,000 (Rs Five Lakhs only)*
5	*Mrs Edna Bhimsen Singh, Partner of M/s Nikhil Shipping Agency*	*Rs 2,50,000/- (Rs Two Lakh Fifty Thousand only)*
6	*Mr Bhimsen Singh Bhagat, Partner of M/s Nikhil Shipping Agency*	*Rs 2,50,000/- (Rs Two Lakh Fifty Thousand only)*

7	*Mr Ugrasen Singh, Clerk of M/s Nikhil Shipping Agency*	*Rs 1,00,000 (Rs One Lakhs only)*
8	*Mr Dhirendra Singh Jagrup, Partner of M/s Guru Kripa International Clearing and Forwarding Co.*	*Rs 2,50,000/- (Rs Two Lakh Fifty Thousand only)* *(Rs 50,000/- deposited vide C No 2222 dated 15.09.1999 in terms of CESTAT order dated 27.07.1999 are ordered to be appropriated)*
9	*Mr Satinder Singh, Partner of M/s Guru Kripa International Clearing and Forwarding Co.*	*Rs 2,50,000/- (Rs Two Lakh Fifty Thousand only)* *(Rs 50,000/- deposited vide C No 2222 dated 15.09.1999 in terms of CESTAT order dated 27.07.1999 are ordered to be appropriated)*
10	*M/s Usha Shipping Agency CHA No 11/915*	*Rs 5,00,000 (Rs Five Lakhs only)"*

2.1 The present appeals are against the order in original as detailed in para 1, supra, passed by the Commissioner in de novo proceedings on the matter being remanded back to him by CESTAT Vide order No A/551-560/2011/CSTB/C-I dated 07.12.2011.

2.2 The facts and issues relating to the matter have been recorded by the CESTAT, in its order of 07.12.2011 in following manner

"3 The brief facts of the case are that a duty demand of Rs 1,59,40,455/- has been confirmed against Shri Deen Dayal Didwania and Shri Navneet Didwania holding them to be de-facto importers of copper ingots/ rods and brass scrap cleared against advance licenses and DEEC and disposed of in the local market instead of utilization thereof in manufacture of final products and export resulting in contravention of condition of the Notification No 203/92-Cus, and penalties under Section 112 of the Customs Act have been imposed as under:

1.	*Sultan Kamruddin Dharani*	*Rs.*	*10,00,000/-*
2.	*Usha Shipping Agency*	*Rs.*	*5,00,000/-*
3.	*Satinder Singh*	*Rs.*	*2,50,000/-*
4.	*Dhirendra Singh Jagrup*	*Rs.*	*2,50,000/-*

5.	*Deen Dayal Didwania*	*Rs.*	*1,50,00,000/-*
6.	*Navneet Didwania*	*Rs.*	*1,50,00,000/-*
7.	*Nikhil Shipping Agency*	*Rs.*	*5,00,000/-*
8.	*Bhimsen Singh Bhagat*	*Rs.*	*2,50,000/-*
9.	*Edna Bhimsen Singh*	*Rs.*	*2,50,000/-*
10.	*Ugrasen Singh*	*Rs.*	*1,00,000/-*

4. The case of the department is that 13 consignments cleared by the three CHAs of copper ingots, wire bars and brass scrap duty free under DEEC scheme against advance license by M/s India Associates Pvt Ltd. Which was fictitious company with no office or factory premises and no means or capacity for manufacture of end products of copper wire and brass extruded solid section from the imported material. They obtained advance license and DEEC books on the strength of fabricated documents and false information given on the instructions of Shri Deen Dayal Didwania and Shri Navneet Didwania and, therefore, Shri Deen Dayal Didwania and Shri Navneet Didwania were able to clear duty free eight consignments of copper ingots/ wires and bars and five consignments of bras scrap from Nhava Sheva port and Mumbai during the year 1994 and 1995. Therefore the demands were confirmed against Shri Deen Dayal Didwania and Shri Navneet Didwania and penalties were imposed on them as well as on the other appellants. Aggrieved from the said order, on the ground of violation of principles of natural justice, the appellants are before us."

2.2 After giving due consideration to the matter, CESTAT remanded the matter back to adjudicating authority stating as follows:

"8. As discussed herein above, we hold that there is a violation of principles of natural justice and, therefore, the matter needs to re-adjudication. Accordingly, we remand back the matter to the adjudicating authority for fresh adjudication with direction to the appellants to appear before the adjudicating authority on 30/01/2012 to fix a date of personal hearing and the adjudicating authority shall fix a date of hearing and shall

complete the hearing on day to day basis, thereafter shall pass the order in accordance with law. With these directions the appeals as well as stay applications and applications for condonation of delay are disposed."

2.3 As per the directions contained in the order of CESTAT matter was adjudicated in the de novo proceedings as per the impugned order, referred in para 1, supra.

2.4 Aggrieved by the impugned order appellants are in appeal before us.

3.1 We have heard Shri Anil Balani (Appeal No C/748/12), Shri Hemant H Dave (Appeal No C/ 990, 991, 992 & 993/12), Shri Roshil Nichani (C/997/12), Shri S N Kantawala (C/999 & 1000/12), Shri Arun H Mehta (C/1001 & 1002/12) and Shri H R Shetty (C/86013/13), Advocates for the Appellants and Shri K K Srivastava, Additional Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellants, advocate Shri S N Kantawala referred to para 74 of the impugned order, and argued that-

- this order has been passed without independent application of mind by the adjudicating authority to the facts and evidence relied in proceedings against the appellant.
- adjudicating authority instead of considering the facts, evidences and the defence advanced by them have relied upon the earlier order of his predecessor and have recorded the same findings.
- Such an order which is passed without the independent application of mind by the adjudicating authority cannot be sustained in law.
- Further Commissioner has held his clients namely Shri Deen Dayal Didwania and Shri Navneet Didwania as de-facto importer contrary to the fact that they had neither filed the bill of entry for the clearance of the goods in respect of which demand of Customs Duty is made.
- They have neither been identified by any one as importers or the beneficiary of the goods imported.

- It is not even the case that the importer did not existed; importer existed and had claimed the goods. Hence the demand of duty and the penalties imposed on his clients cannot be sustained.
- Shri Deen Dayal Didwania appellant in appeal No C/999/2012 has during the pendency of this appeal has expired and hence this appeal will abate in terms of Rule 22 of CESTAT Procedure Rules, 1982.

3.3 Learned Authorized Representative while reiterating the findings recorded in the order, submitted that the matter was remanded by the tribunal to re-adjudicate the matter after following the principles of natural justice. Commissioner has according after following the principles of natural justice re-adjudicated the matter as per impugned order.

4.1 We have considered the impugned order along with the submissions made in appeals and during the course of arguments on appeals.

4.2 Taking note of the fact that appellant in appeal No C/999/2012, Shri Deen Dayal Didwania has expired, this appeal abates as per rule 22 of CESTAT Procedure Rules, 1982.

4.3 Before we proceed further in matter, it is necessary to look into the timeline in respect of the matter.

1994-95	Imports of Copper ingots, wire, bars and brass scrap made in the name of M/s India Associates. Imports were made against Advance Licenses issued by DGFT. Matter was investigated and it was alleged that imports were made in fictitious name of M/s India Associates, by duo namely Shri Deen Dayal Didwania and Shri Navneet Didwania. The goods imported were clandestinely diverted by them in local market and were not used in production export goods, in contravention of conditions of Notification No 203/92-Cus. During course of investigations statements of various persons connected with the imports were recorded.

15.02.1996	After completion of investigations a Show Cause Notice was issued to various persons proposing to demand duty by denying the exemption claimed as per notification No 203/92-Cus and for imposing penalties as Section 112 of the Customs Act, 1962.
03.07.1996	The Show Cause Notice was adjudicated by the Commissioner, demanding duty and imposing penalties on the appellants. Aggrieved Appellants filed the appeal before Tribunal
	The order of Commissioner was set aside by the tribunal as the copy of the Show Cause Notice was not served on all the appellants and matter remanded back to the adjudicating authority for de novo consideration after following the principles of natural justice.
31.03.2010	The matter re-adjudicated by the Commissioner in de-novo proceedings. Aggrieved by the order of Commissioner, appellants again filed the appeal before tribunal
7.12.2011	Tribunal has vide its order referred in para 2.1, supra set aside the order dated 31.03.2010 and again remanded the matter back to Commissioner for adjudication after following the principles of natural justice.
18.07.2012	The matter re-adjudicated by the Commissioner in de-novo proceedings as per the impugned order. Aggrieved by the order of Commissioner, appellants again filed the appeal before tribunal

4.4 The reason for us reproducing the timeline is to highlight the manner in which the matter has been dealt by the departmental adjudicating authority. The matter has been remanded twice by the tribunal, for reconsideration after following the principles of natural justice. When the matter is remanded for following the principles of natural justice it needs to be considered in entirety after following the principles of natural justice. If the issue is to be adjudicated by just reiterating the findings and decisions recorded in the previous order in original which has been set aside by tribunal then the adjudicating authority has failed in task assigned to him for reconsideration of matter.

4.5 In para 74 of the impugned order Commissioner observes as under:

"74. I have found that ***my predecessor adjudicating authority while adjudicating first round of denovo adjudication diligently analysed the conspiracy hatched by Didwania duo and other noticees as enumerated in the aforesaid paras 63 to 73. Now, I do not find it necessary to again discuss the same.*** *I find that CESTAT in remand order No A/551-560/2011/CSTB/C-I dated o7.12.2011 held that "there is a violation of principles of natural justice and, therefore, the matter needs re-adjudication". The crux of the noticees' contention was that natural justice not given to them while adjudicating first round of denovo adjudication order by my predecessor adjudicating authority. I do not find any strength in their argument that they were not given natural justice. My predecessor adjudicating authorities had given full opportunity to submit their evidence in support of their defence, if any. They were granted personal hearings number of times and the same were attended by the noticees. The request of Mr Sujay N Kantawala, Advocate for Didwania duo for cross examination of co-noticees was also met by my predecessor adjudicating authorities while adjudicating the first round of denovo adjudication even though it was not necessary to allow cross examination of co-noticees as per the decision of Hon'ble Supreme Court in case of Kanungo & Co Vs Collector of Customs, Calcutta [1983 (13) ELT 1486 (SC)] and Hon'ble Tribunal's decisions in the cases of Maya Mahal Industries Vs CCE, Meerut {1995 (80) ELT 1118 (T)} & Popular Carpet Industries Vs CC(P) Mumbai [1996 (884) ELT 244 (T)]. However, the noticees went*

in appeal for denovo adjudication as they were not given natural justice."

4.6 It is not desirable that the adjudicating authority while deciding the case in de-novo proceedings refers to the order of predecessor adjudicating authority and concludes stating that he will not discuss the issue (conspiracy hatched by Didwania) as the same has been diligently analyzed by the predecessor adjudicating authority. The order of predecessor adjudicating authority, when set aside by the appellate authority (Tribunal), is set aside for all purpose and ceases to exist. By application of doctrine of merger the order of adjudicating authority gets merged with the order of appellate authority.

4.7 The observations recorded by the Commissioner to the effect that predecessor adjudicating authority had decided the case after allowing natural justice to the noticees' is contrary to the findings recorded by tribunal while remanding the matter.

4.8 In the present case when tribunal has given categorical finding on issue of denial of natural justice while setting aside the order of predecessor adjudicating authority, adjudicating authority could not have concluded otherwise as has been done by the impugned order. If Commissioner was aggrieved with the order of tribunal and had view contrary to the view expressed by tribunal then he should have filed the appeal before the appropriate forum for getting the order set aside.

4.9 After having recorded so Commissioner has again proceeded to decide the case by completing the formality of natural justice, and that too by holding that he does not intend to discuss the issue again as the same has been decided and concluded by the predecessor adjudicating authority. In our view such an order which has been passed with pre conceived mind on the basis of the order which has been set aside by the appellate authority cannot be sustained.

4.10 In result the matter needs to be remanded back to the adjudicating for denovo consideration after following the principles of natural justice.

5.1 In view of discussions as above -

i. Appeal No C/999/2012 abates as the appellant Shri Deen Dayal Didwania has expired.

ii. Appeals of all other appellants are allowed, the impugned order in their respect set aside and matter remanded back to adjudicating authority for de novo consideration.

iii. While considering the matter in de novo proceedings adjudicating authority shall follow the principles of natural justice. The appellants are also directed to fully co-operate with the adjudicating authority in de novo proceedings and should attend the personal hearings on the dates to be fixed by the adjudicating authority.

iv. Needless to say that matter is in relation to imports made during 1994-95 and hence adjudicating authority should complete the denovo proceedings and pass the fresh adjudication order within four months of the receipt of this order.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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