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

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 262 of 2010

(Arising out of Order-in-Original No. 161/2009/CAC/CC/MS dated 28.10.2009 passed by Commissioner of Customs (Adjudication), Mumbai)

.....Appellant

Commissioner of Customs (Export), Mumbai
New Custom House, Ballard Estate,
Mumbai-400001

VERSUS

M/s. Bajaj Exports **.....Respondent**
84, Govt. Industrial Estate,
Kandivali (West), Mumbai-400067

WITH

Customs Appeal No. 88949 of 2018

(Arising out of Order-in-Original No. 161/2009/CAC/CC/MS dated 28.10.2009 passed by Commissioner of Customs (Adjudication), Mumbai)

.....Appellant

Commissioner of Customs-Adjudication, Mumbai
New Custom House, Ballard Estate,
Mumbai-400001

VERSUS

M/s. Arjun Impex **.....Respondent**
51, Abhishek, 303/307,
Samual Street,
Mumbai-400003

Appearance:

Shri Ramesh Kumar, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86596-86597/2021

Date of Hearing: 27.07.2021
Date of Decision: 27.07.2021

Per: S.K. MOHANTY

Heard the learned AR for the department. None appeared on behalf of the respondent despite notice. On going through the records of the case, we also find that in the past several occasions (25 times) also, no body appeared on behalf of the respondent.

2. Learned AR for the department submits the adjudicating authority has confirmed a duty demand of Rs.64,76,464.74 jointly and severally on Bajaj Exports (licence holder) and Arjun IPEX (the transferee- importer). Revenue also submits that the adjudicating authority erred in appropriating an amount of Rs.15 lakhs deposited by Bajaj Exports towards the duty liability. He submits that duty foregone on the imports needs to be recovered from the importer i.e. Arjun IPEX, who have imported the impugned goods on the strength of a licence transferred by Bajaj Exports. Learned Commissioner has erred in demanding duty jointly and severely even though M/s Surge Impex is clearly identifiable as importer. He also submits that the amount deposited by Bajaj Exporter during the course of investigation can at best be adjusted towards their own liability i.e. penalty and not against the duty liability of Surge Impex.

3. We find that these appeals have been preferred by the Revenue on a limited ground of confirmation of the duty demand on the importer as well as adjustment of the pre-deposited amount on the licence holder. Since, the issue involved in these appeals is entirely based on facts, we are of the view that the learned Adjudicating Authority should consider the Revenue's prayer with regard to confirmation of the appropriate adjudged demand on the transferee/licence holder.

4. Therefore, by setting aside the impugned order, the matter is remanded to the learned Adjudicating Authority for consideration of the order portion with regard to fixing the liability for payment of duty on the appropriate person and also

to specify who is liable to pay the penalty imposed in the said order.

5. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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