CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87142 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

M/s Bharat Udyog **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

WITH

Customs Appeal No. 87143 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Raman Gupta **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87144 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Harvinder Singh **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87227 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Suresh Pal **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87228 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Munish Gupta **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87229 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Lalit Gupta **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87257 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

M/s Grape Marketing Pvt. Ltd. **.... Appellant**
Plot No. 26-27B, SICOP Industrial Area,
Kathua, Jammu (J&K)

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

AND

Customs Appeal No. 87258 of 2019

(Arising out of Order-in-Appeal No.74-81(Adjn-Exp)/2019(JNCH)/Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH)

Shri Chetan Jain **.... Appellant**
H-22, Khasra No. 38/4 Shahbad Dairy,
Shiv Vihar, New Delhi, Delhi-110042.

Versus

Commissioner of Customs JNCH **.... Respondent**
Nhava Sheva, Taluka-Uran, Dist. Raigad,
Maharashtra – 400707.

Appearance:

Shri S. Sunil, Advocate for the Appellant

Shri S. K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85361-85368/2023

Date of Hearing: 02.03.2023
Date of Decision: 02.03.2023

Per: Anil G. Shakkarwar

Above stated eight appeals are taken together for decision since they are arising out of common impugned Order-in-Appeal.

2. Brief facts of the case are that M/s Bharat Udyog had entered into an agreement for purchase on High Sea Sale basis a product known as Remelted Lead ingots. They filed two Bills of Entry bearing No. 746043 and 747087 both dated 13.01.2019 involving Customs duty of Rs. 5,91,211/- which was forgone against Release Advice No. 17805 and 17806 issued from the ICD, Tughalakabad against Advance License No. 1810002331 dated 24.09.2008. The condition of advance license was that the imported goods, on

which Customs duty was forgone, were to be used in the manufacture of export goods and finished goods are to be exported and foreign exchange to be realized. It appeared to Revenue during investigation conducted in 2010 that appellant had diverted the imported goods and therefore, duty forgone of Rs. 5,91,211/- was recoverable from M/s Bharat Udyog and other appellants were liable for penalty. Therefore, a show cause notice dated 08.06.2011 was issued to all the appellants. Through Order-in-Original dated 18.04.2017, the demand was confirmed and all the appellants were imposed with various penalties. Aggrieved by the said order, appellants were in appeal before Commissioner (Appeals), who decided the appeal through impugned order dated 29.03.2019 wherein he upheld the Order-in-Original. Therefore, the appellants are before this Tribunal.

3. The learned Counsel for the appellants has submitted that the show cause notice is totally misconceived and that the investigation was carried out in the year 2010 and the investigation was in respect of the goods imported vide Bill of Entry No. 2064739 dated 19.05.2009. However, the demand was raised in respect of goods imported through above said two Bills of Entry dated 13.01.2009. He has also submitted that the goods imported vide the Bills of Entry for which the Customs duty of Rs. 5,91,211/- was demanded were utilized for manufacture of final product, which were exported and in the show-cause notice there is no such allegation that the goods manufactured out of goods imported through Bill of Entry dated 13.01.2009 were not exported. He has stated that the demand of Customs duty was in respect of such imports which had not violated any provisions of law, therefore, the show cause notice is not sustainable.

4. Learned AR has reiterating the findings of the learned Commissioner (Appeals).

5. I have carefully gone through the records of the case and submissions made by both sides. I am reproducing para 23 of show cause notice and sub-para (vi) of para 24 of the said show cause notice dated 08.06.2011, which are as under:-

> *"23 Release advice No. 17805 and 17806 were issued from the ICD, TKD. On the basis of which M/s Bharat Udyog, Kathua, Jammu filed two Bills of Entry No. 746043 dated 13.01.2009 and 747087 dated 13.01.2009 respectively at the Port Import, Nhava Sheva, Mumbai in which duty foregone is Rs. 5,91,211/- (Rupees Five Lakhs Ninety One Thousand Two Hundred Eleven only) which is demandable from M/s Bharat Udyog, Kathua, Jammu.*
>
> *24. From the above, the following emerges:-*
>
> *xxxxxxxx*
>
> *Xxxxxxxx*
>
> *(vi) The goods Re-melted Lead Ingots imported vide Bill of Entry No. 2064739 dated 19.05.2010 and seized vide Panchnama dated 26.06.2010* ***(RUD-16)*** *are liable for confiscation under Section 111 (d) of the Customs Act, 1962."*

6. Perusal of above contents of the said show cause notice dated 08.06.2011, it indicates that the investigation was in respect of goods imported vide Bill of Entry No. 2064739 dated 19.05.2010 whereas the duty was demanded in respect of goods imported through two Bills of Entry dated 13.01.2009. Therefore, it is clear that there is no allegation in the show cause notice in respect of goods imported through above stated two Bills of Entry dated 13.01.2009 and therefore, the show cause notice is not sustainable.

7. I, therefore, set aside the impugned order and allow all the appeals.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha