CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 1074 OF 2009

[Arising out of Order-in-Original No: CAO CC-MJ/40/2009/Adj.ACC dated 24th September 2009 passed by the Commissioner of Customs, Air Cargo Complex, Mumbai.]

Manish P Atmaramani
B-303 Yamuna Apartment, Vasant Sagar Complex,
Thakur Village, Kandivli West, Mumbai - 400101 … ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex, Sahar, Andheri (E), Mumbai 400099 …***Respondent***

APPEARANCE:

Shri N S Patel, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A /86231/2022

DATE OF HEARING: 28/04/2022
DATE OF DECISION: 28/04/2022

This appeal lies against order-in-original no. CC-MJ/40/2009/Adj.ACC dated 24th September 2009 of Commissioner of Customs, Air Cargo Complex, Mumbai pertaining to alleged import of ‘atorvastatin calcium’ by mis-declaring as ‘calcium phosphate’ valued at ` 37,44,975/- in bill of entry no. 484608/12.12.2005 filed by M/s New Millenium Trading. The goods, though confiscated by order dated 20th February 2007, were allowed to be redeemed on payment of fine ` 2,00,000/- and duty of ` 12,89,895/-, along with applicable interest, besides penalty of ` 50,000/- each imposed under section 112 of Customs Act, 1962 on Shri Manish Atmaramani and Shri Purshottam Atmaramani. On appeal by the two individuals, the dispute was remanded back by the Tribunal in final order no. S/459-460/08 CSTB/C-II A/460-461/08 CSTB/C-II dated 4th October 2008 for re-consideration after hearing the appellants. However, on remand the proper officer has enhanced the penalty under section 112(a) of Customs Act, 1962 to ` 2,50,000/-.

2. It is on record that the proceedings against Shri Purshottam Atmaramani had abated under orders of the Tribunal. The present appeal is now limited to the penalty of ` 2,50,000/- imposed on Shri Manish P Atmaramani under section 112 of Customs Act, 1962.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. It is settled position that, in proceedings arising from remand of an appeal, the appellant should not be put in a worse position than he was earlier. Furthermore, only one of the appellants was before the

authority in remanded proceedings and his role, not separately considered in the former occasion, needed to be ascertained afresh. Breach thereof suffices to set aside the impugned order. The adjudicating authority has imposed penalty on the appellant who, admittedly, resided in Singapore and despite there being no evidence that of any wrong-doing in connection with filing of bill of entry at the port of import or of arranging for clearance thereof. The limited finding, such as it is, on the role of the late Purshottam Atmaramani, cannot be visited on the son owing to the filial connection. There is neither finding, or for that matter any allegation, that the appellant herein was present at the time of import or actively participated in the clearance of the goods.

5. In view of the above, there is no reason to sustain the penalty imposed on the appellant. Accordingly, the appeal is allowed by setting aside the penalty in the impugned order.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*