CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85066 of 2014

(Arising out of Order-in-Appeal No. 935 (Gr.VA/B)/2013(JNCH)/IMP-719 dated 27.09.2013 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

M/s Swarup Auto Pvt. Ltd. **.... Appellant**
902/290, Gali No. 3, Village Shalimar,
New Delhi – 110052

Versus

Commissioner of Customs (Imp), Nhava Sheva .... Respondent
JNCH, Nhava Sheva, Uran, Raigad - 400707

WITH

Customs Appeal No. 85067 of 2014

(Arising out of Order-in-Appeal No. 935 (Gr.VA/B)/2013(JNCH)/IMP-719 dated 27.09.2013 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Yogeh Kumar Baisiwala **.... Appellant**
Director of M/s Swarup Auto Pvt. Ltd.
902/290, Gali No. 3, Village Shalimar,
New Delhi – 110052

Versus

Commissioner of Customs (Imp), Nhava Sheva .... Respondent
JNCH, Nhava Sheva, Uran, Raigad - 400707

Appearance:

Shri Stebin Mathew, Advocate for the Appellant
Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85365-85366/2024

Date of Hearing: 19.03.2024

Date of Decision: 19.03.2024

PER: S.K. MOHANTY

Heard both sides and perused the records.

2. Appellants have filed these appeals against the Order-in-Appeal dated 27.09.2013 passed by the learned Commissioner of Customs (Appeals), Mumbai-II. Vide the impugned order, the learned Commissioner (Appeals) has dealt with the issues considered by the original authority in paragraph 7(i) to (viii) and has upheld the finding of the original order in respect of the paragraphs (i), (ii) and (iii). With regard to paragraphs (iv) to (viii) of the original order, the learned Commissioner (Appeals) has ordered for confiscation of the goods under Section 111(d) and 111(m) of the Customs Act, 1962 with an option to the appellant to redeem the same on payment of redemption fine of Rs.1,50,000/- under Section 125 ibid. Further, the impugned order has also imposed penalty of Rs.1 lakh each on both the appellants under Section 112(a) ibid. In addition, penalty of Rs.75,000/- each was also imposed on both the appellants under Section 114AA ibid. The appellant has assailed the impugned order on the ground that without considering the detailed reply filed to the show-cause notice, both the authorities below have passed the respective orders in denying the submissions of the appellants made with regard to proper valuation of the imported goods.

3. On perusal of the case records, we find that the learned Commissioner (Appeals) has mainly rejected the claim of the appellants on the ground that they did not participate in the case proceedings before the original authority as well as before him. He has recorded various dates on which the appellants did not appear for personal hearing. However, on perusal of the case records, we find that the appellants had filed a detailed reply dated 09.10.2010, in response to the show-cause notices issued to them, which was not

addressed to by the authorities below. It is not the Department's case that show-cause notice was not replied by the appellant inasmuch the postal acknowledgement endorsed to the said reply clearly demonstrated that the appellant has sent the reply through the postal authorities, which was also received by the Department. Since the factual matrix of the case has not been appreciated by both the authorities below, we are of the view that ends of justice would be met, if the matter is remanded to the original authority for a fresh fact finding on the issue involved. Therefore, by setting aside the impugned order, matter is remanded to the original authority for passing of a *de novo* adjudication order. It is made clear that while considering the adjudication proceedings, the original authority should examine the reply to the show-cause notice dated 14.06.2010 filed by the appellants and should address all the issues raised therein. Further, the appellants should also be given a reasonable opportunity before adjudication of the matter to further explain their case in detail.

5. In the result, both the appeals are allowed by way of remand to the original authority.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha