

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: C/66 & 67/2011

[Arising out of Order-in-Appeal No: 128 & 129/MCH/ADC/
GR.VB/2010 dated 28th October 2010 of Commissioner of Customs
(Appeals), Mumbai Zone – I.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : | Yes |
| 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes |
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Pradeep Gupta
Brijpal Sharma

... *Appellants*

versus

Commissioner of Customs (Import)
Mumbai

... *Respondent*

Appearance:

None for appellants

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 20/12/2018
Date of decision: 20/12/2018

ORDER NO: A/ 88292-88293 / 2018

Per: C J Mathew

These appeals have been filed against order-in-appeal no. 128 & 129/MCH/ADC/GR.VB/2010 dated 28th October 2010 of Commissioner of Customs (Appeals), Mumbai Customs-I which, while disposing off appeals of Shri Pradeep Gupta and Shri Brijpal Sharma against order-in-original no. 103/ADC/GR VB/MRRR/2008-09 dated 23rd March 2009, confirmed the imposition of penalty of ₹ 60,000 and ₹ 40,000 respectively under section 112 (a) of Customs Act, 1962 on the two appellants herein.

2. None appeared for the appellants. However, Learned Counsel for the appellants submits *vide* communication dated 17th December 2018 that the first appellate authority had initially disposed off the appeals against the order of the original authority on 10th August 2009 which were allowed by the Tribunal *vide* order no. A/85386-85387/2018 dated 28th February 2018 in appeals filed by appellants and that the first appellate authority had, once again, issued duplicate orders dated 28th October 2010 which is impugned in the present set of appeals. According to the communication, second set of orders

should be set aside as barred by *res judicata*.

3. We have heard Learned Authorised Representative.

4. On perusal of the order that Learned Counsel claims to have been issued in the first instance by the first appellate authority, it would appear that the facts do not bear out the submission. The order dated 10th August 2009 pertains to the appeal of the importer and not that of the two individuals now before us. Hence, the first appellate authority by the order now impugned does not appear to be barred by *res judicata*.

5. However, the first appellate authority appears to have confirmed the penalties imposed on the appellants herein on the basis of the findings against the importer by his predecessor in office without further application of mind on his part to the alleged breaches. The findings of the predecessor in office had been set aside by the Tribunal in the order referred *supra*. Accordingly, with the finality of that foundation on the basis of which the penalties have been upheld in the impugned order we are unable to concur with the lower authorities.

6. For the above reason, we set aside the impugned order and allow the appeals.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

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(C J Mathew)
Member (Technical)