CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 90 of 2011

(Arising out of Order-in-Original No. CC/MJ/23/2010 ADJ.ACC dated 18.11.2010 passed by the Commissioner of Customs, (Import), Mumbai)

M/s Swastick Shipping Agency Pvt. Ltd. ....Appellant
C/o Shri Niranjan Puthran,
302/B, Park Side-II, Raheja Estate,
Borivali (East), Mumbai – 400 066

VERSUS

Commissioner of Customs ....Respondent
(ACC & Import), Mumbai
Air Cargo Complex,
Sahar Air Port, Andheri (East),
Mumbai – 400 099

AND

Customs Appeal No. 91 of 2011

(Arising out of Order-in-Original No. CC/MJ/23/2010 ADJ.ACC dated 18.11.2010 passed by the Commissioner of Customs, (Import), Mumbai)

Shri Niranjan Puthran ....Appellant
302/B, Park Side-II, Raheja Estate,
Borivali (East), Mumbai – 400 066

VERSUS

Commissioner of Customs ....Respondent
(ACC & Import), Mumbai
Air Cargo Complex,
Sahar Air Port, Andheri (East),
Mumbai – 400 099

APPERANCE:

None for the Appellant
Shri Manoj Kumar, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85858-85859/2020

Date of Hearing: 21.01.2020
Date of Decision: 21.01.2020

PER: DR. SUVENDU KUMAR PATI

These appeals were taken up for hearing on 21st January, 2020 in the absence of the Appellants and both the appeals were allowed, the detail order of which runs as follows:

Two consignments were imported by the appellant with description 'plastic parts of toys' but on examination it was found actually containing 4,00,000 pieces of Analog Watches, the approximate value of which was Rs.68,00,000/- which was seized by the respondent-department.

2. As clearance for the consignment was initiated by appellant M/s Swastick Shipping Agency Pvt. Ltd., Legal formalities concerning adjudication process were completed that resulted in passing of adjudication order no. CAO No. CC/NS/14/2007/Adj/ACC dated 25.10.2007 with absolute confiscation of the seized imported goods and penalty of Rs.3,40,000/- on the proprietor Mr. Umesh Shetty and 1,00,000/- on Director of CHA Company Mr. Niranjan Puthran.

Proceeding against importer firm M/s. Orbit International and Drishti Overseas were abated as its proprietor Mr. Yogesh Merchant died. Appellant Mr. Niranjan Puthran and respondent-department both filed appeals before the CESTAT. Appellant Mr Niranjan's appeal was remanded for *De-novo* adjudication vide order No. A/223/08/WZB/MUM/CSTB/C-II dated 05.03.2008. In the *De-novo* adjudication vide order No. CC/MJ/23/2018/Adj/ACC dated 18.11.2010 penalty of Rs.1,00,000/- against Director of CHA Company Mr. Niranjan Puthran was increased to Rs.2,00,000/- and CHA Company was also penalised for Rs.1,00,000/-. Both of them have filed these two appeals.

3. We have heard the submissions from the side of the respondent and perused the appeal records. It is observe that enhanced punishment was awarded without following the due process and CHA was also penalised against whom no specific direction was available in the order of CESTAT for initiation of adjudication process. Further, it is learnt during the course of hearing that in the department appeal No. C/199/2008 for enhancement of penalties, CESTAT Mumbai had passed an order on dated 28th August, 2017 vide order No. A/09550/17/CB remanding the matter back to the original adjudicating authority. This being the facts on record, in the adjudication order, penalty should not have been increased and a new party should not have been held guilty in the absence of specific direction by the CESTAT. Appellants could not be placed in worse off situation for having preferring appeal

before the CESTAT. Hence, we set aside the order passed by the Commissioner (Appeals) that confirmed such an order. Both the appeals are accordingly allowed.

(Operative portion of the order pronounced in open Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad