CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85864 OF 2014

[Arising out of Order-in-Appeal No: 1368 (CFS-MULUND)/2013(JNCH)/IMP-1105 dated 19th December 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Disha Enterprises
A-7/G-1 Dilshad Gardens, Delhi - 110095 … ***Appellant***

versus

Commissioner of Customs (Import)
ICD, Mulund-Goregaon Link Road, Mulund
Mumbai. ***…Respondent***

APPEARANCE:

Shri Prabhat Kumar, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87544/2024

DATE OF HEARING: 03/12/2024
DATE OF DECISION: 03/12/2024

PER: C J MATHEW

This appeal of M/s Disha Enterprises lies within the narrow compass of enhancement of penalty, on appeal filed by jurisdictional

Commissioner of Customs before the Commissioner of Customs (Appeals), Mumbai – II, Jawaharlal Nehru Customs House, Nhava Sheva, holding that the original authority had erred in imposition of penalty under section 112 of Customs Act, 1962 instead of resorting to section 114AA of Customs Act, 1962 while confirming recovery of duties of customs under section 28 of Customs Act, 1962.

2. Learned Counsel for the appellant submitted that the order[1] of the first appellate authority no longer has standing as the issue of duty liability had been decided by the Tribunal in their favour *vide* final order[2] disposing off, *inter alia,* their customs appeal[3] challenging order[4] of Commissioner of Customs (Appeals), Mumbai-I.

3. We have heard Learned Authorised Representative

4. On perusal of the records, we find that the original authority had confirmed duty liability of ₹ 8,81,904 under section 28 of Customs Act, 1962, along with applicable interest under section 28AB of Customs Act, 1962, and, while imposing penalty of ₹ 2,50,000 on the proprietor under section 112 of Customs Act, 1962, dropped proposal for imposition of penalty under section 114A of Customs Act, 1962. While the appellant herein had carried its grievance over duty recovery to the first appellate authority, the jurisdictional

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[1] [order-in-appeal no. 1368 (CFS-MULUND)/2013(JNCH)/IMP-1103 dated 19th December 2013]
[2] [final order no. A/86594-86607/2019 dated 13th September 2019]
[3] [customs appeal no. 1089 of 2012]
[4] [order-in-appeal no. 449-451/MCH/JC/ICD/CFS(M)(I)/2012 dated 7th August 2012]

Commissioner of Customs had directed filing of appeal against non-imposition of penalty under section 114A of Customs Act, 1962 and it is the disposal of the latter that is now before us.

5. On perusal of the records, we find that the order-in-original had been challenged before the first appellate authority by appellant herein that came to be disposed off *vide* order[5] rejecting their plea for relief but, on further appeal, was disposed off by the Tribunal in *Disha Enterprises v. Commissioner of Customs (Import), Mumbai*, referred to by Learned Counsel *supra,* holding that demand did not survive.

6. Accordingly, in the absence of confirmation of demand, imposition of penalties under section 114A of Customs Act, 1962 cannot sustain. Consequently, the appeal is allowed.

(Operative part of the order pronounced in open court on 3rd December 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*

[5] [order-in-appeal no. 449-451/MCH/JC/ICD/CFS(M)(I)/2012 dated 7th August 2012]