CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85092 OF 2021

[Arising out of Order-in-Original No: PCCP/ADJ/RL/03/2020 dated 30th September 2020 passed by The Principal Commissioner of Customs (Preventive), Mumbai.]

Principal Commissioner of Customs (Preventive)
New Custom House, Ballard Estate, Mumbai-400 001. … ***Appellant***

versus

Blue Ribbon Emporium
Surendra Kumar Proprietor
H No 89, Pocket-2, Sector 24, Rithala
Rohini North-West, Delhi-110085. …***Respondent***

APPEARANCE:

Shri DS Maan, Commissioner (AR) for the appellant

None for the respondent

CORAM:

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

FINAL ORDER NO: 85230/2025

DATE OF HEARING: 23/09/2024
DATE OF DECISION: 20/02/2025

PER: C J MATHEW

Principal Commissioner of Customs (Preventive), Mumbai is in appeal before us consequent to order[1] of Principal Commissioner of Customs (Preventive), Mumbai, disposing off show cause notice issued to seven persons, in which the proposals therein were confirmed except insofar as M/s CEAL Shipping & Logistics Private Ltd, who was discharged from liability to penalty under section 114AA of Customs Act, 1962, while imposing penalty under section 114 of Customs Act, 1962 was concerned. It is seen that the proceedings had been initiated in connection with attempt to export 'shoes' and 'cosmetics' at overvalued prices with intent to avail refund of 'integrated goods and service tax (IGST)' beyond actual entitlement.

2. The relief sought in the appeal is limited to setting aside the impugned order and for remand of the matter to the Principal Commissioner of Customs, Mumbai Zone – I to enable fresh adjudication and, purportedly, for the reason that notification[2] of the Central Board of Indirect Taxes & Customs (CBIC), appointing several classes of 'officers of customs' for specified jurisdictions, did not confer authority to issue show cause notice and to adjudicate upon Commissioner of Customs (Preventive), Mumbai.

3. We take note that, insofar as the appeal is concerned, only the exporter on record, *viz*, M/s Blue Ribbon Emporium had been made

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[1] [order-in-original no. PCCP/ADJ/RL/03/2020 dated 30th September 2020]
[2] [no. 82/2017-Customs (NT) dated 24th August 2017]

respondent and, though, other noticees were also proposed to be fastened with detrimental consequences, they had not been put to notice insofar as the present appeal, and the relief sought, is concerned. This, to us, does not appear to be correct insofar as the plea for fresh adjudication would necessarily encompass the other six respondents.

4. It is also seen from the records that during the process of adjudication and on several occasions assigned by the Tribunal for disposal of both miscellaneous application as well as the present appeal, none except for M/s CEAL Shipping & Logistics Private Ltd were represented and, even they, by not having been made noticees in the present appeal, are, for obvious reasons, not present.

5. We have heard Learned Authorised Representative.

6. The review conducted by the competent authority, and with consequent direction to file appeal before the Tribunal, appears to have been made in the ignorance of chapter XV of Customs Act, 1962 and, in particular, of

> *'129B. Orders of Appellate Tribunal.—*
>
> *(1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order*

with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.'

7. It is clear from the jurisdictional framework of the Tribunal that, it may, in appeal either confirm, modify or annul a decision or order or may refer the case back, with or without direction, to the authority which undertook the decision. The Tribunal is not competent to alter the show cause notice or, remand the matter back to an authority other than the one which passed the impugned order. For the above reason, this appeal does not succeed as the relief sought therein is beyond the scope of the jurisdiction assigned to the Tribunal in section 129B of Customs Act, 1962.

8. Appeal is dismissed.

(Order pronounced in the open court on 20/02/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*