CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89364 OF 2014

[Arising out of Order-in-Appeal No: 2700 to 2702 (Adj(I))/2014(JNCH)/IMP-2566 to 2568 dated 10th July 2014 passed by Commissioner of Customs (Appeals), Mumbai – II.]

Anil Shankarbhai Patel
B-1106, Sai Residency, Opp. Indian Oil Petrol Pump,
Althan, Surat-394210. … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89365 OF 2014

[Arising out of Order-in-Appeal No: 2700 to 2702 (Adj(I))/2014(JNCH)/IMP-2566 to 2568 dated 10th July 2014 passed by Commissioner of Customs (Appeals), Mumbai – II.]

Rahul Nitinbhai Shah
C-14, Sidhpura Industrial Estate, LBS Marg
Ghatkopar (W), Mumbai 400 086. … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

AND

CUSTOMS APPEAL NO: 89366 OF 2014

[Arising out of Order-in-Appeal No: 2700 to 2702 (Adj(I))/2014(JNCH)/IMP-2566 to 2568 dated 10th July 2014 passed by Commissioner of Customs (Appeals), Mumbai – II.]

Vardhaman Impex
C-14, Sidhpura Industrial Estate, LBS Marg
Ghatkopar (West), Mumbai-400086. … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Ashwini Kumar, Shri Abhijit and Shri Shub, Advocates for the appellants

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

CORAM:

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

FINAL ORDER NO: 85976-85978/2025

DATE OF HEARING: 11/11/2024
DATE OF DECISION: 13/05/2025

PER: C J MATHEW

M/s Vardhaman Impex, Shri Anil Shankarbhai Patel and Shri Rahul Nitinbhai Shah are in appeal against recovery of differential duty of ₹ 28,04,769 under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, besides being imposed with penalties of like amount under section 114A and penalty of ₹ 1,00,000 each under section 112 of Customs Act, 1962 on the two individuals.

2. Proceedings, concluding in the impugned order[1] of Commissioner of Customs (Appeals), Mumbai – II, had dismissed their challenge thereof, and without going into the merit, on the ground of non-compliance with pre-deposit ordered by the first appellate authority on 25th April 2014. It is on record that the appellants, instead of challenging the same before the Tribunal or complying thereof, had preferred an application for modification which was not only rejected but also, for non-compliance with the earlier order, the appeals were dismissed.

3. We have heard Learned Counsel for the appellants and Learned Authorized Representative.

4. There is no doubt that the first appellate authority, having noted non-compliance thereof with the orders of pre-deposit as it stood then, dismissed the appeals at the threshold. In filing the appeals before the Tribunal, the pre-deposit prescribed in section 129E of Customs Act, 1962 had been complied with. At the time of filing of appeals, determination of the pre-deposit and disposal of application for reconsideration of pre-deposit, the formulation, now incorporated in section 129E of Customs Act, 1962, was not in existence. In the changed circumstances of the terms of admission of appeal and the appeal before the Tribunal having been held as maintainable, the lack of finding by the first appellate authority impedes disposal of appeals

[1] [order-in-appeal no. 2700 to 2702 (Adj(I))/2014 (JNCH)/IMP-2566 to 2568 dated 10th July 2014]

in accordance with section 129B of Customs Act, 1962. To remedy this, and as the pre-deposit made for appeal before Tribunal is inclusive of such amount which, under the mandate of law with effect from 6th August 2014, would have sufficed for disposal of appeal on merits before the first appellate authority, the impugned order is set aside and the appeals restored before the first appellate authority for disposal on merits.

5. Accordingly, appeals are allowed by way of remand.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*