CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86535 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-APSC-APP-18/2022-23 dated 19.04.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.)

M/s DHL Express India Pvt. Ltd. ....Appellant
Plot No. 66, Road No. 13,
MIDC, Ahdheri East,
Mumbai – 400 093

VERSUS

Commissioner of Customs, Air Special Cargo, Mumbai ....Respondent
Courier Cell, Airport Special Cargo,
Avas Carporate Point, Marol Naka,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 059

<u>APPERANCE:</u>

Shri A.K. Prabhakar, Advocate for the Appellant
Shri Dinesh Nanal, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON’BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86360/2025

Date of Hearing: 17.09.2025
Date of Decision: 17.09.2025

Heard from both the sides in this appeal.

2. Learned Counsel for the Appellant submitted that natural justice was denied to the Appellant is not providing the right of cross examination of key witness Mr. Biren J. Sethia, relying on whose statement, penalty under Section 112(a) was imposed on the Appellant despite the fact that they had taken all dues diligence in conducting x-ray scan of the goods, which exporter/courier company classified as “Decorative Glass Pieces” but ultimately found by Customs Authorities as “Polished diamonds” and therefore, the matter has to be remanded back to the Adjudicating Authority for *de novo* adjudication after grant of right of cross examination to the Appellant of the witness Mr. Biren J. Sethia.

3. Learned Authorised Representative objects the submission on the ground that such a requirement is not mandatory when a proceeding is initiated before a Quasi-Judicial Authority but he also concedes to the demand of the Appellant for a different reason. As to him, there was a clear finding of the Adjudicating Authority namely the Additional Commissioner of Customs, Courier Cell, Airport Special Cargo that Appellant was held liable for penalty under Section 112(a) and 114(i) of the Customs Act, 1962, as noted in his order at para 34.5 (wrongly mentioned in Order-in-Original as 35.4) but may be due to oversight no penalty was awarded under Section 114(i) of the Customs Act and in the re-adjudication proceeding, this irregularity could be remediated.

4. Taking note of the submission, I am of the considered view that to ensure natural justice to the Appellant matter could be remanded back to the Adjudicating Authority who shall provide opportunity to the Appellant to cross examine the principal witness Mr. Biren J. Sethia and to re-adjudicate the matter as per law but submission made by learned Authorised Representative should not bother him till adjudication proceeding is completed in its totality, which may be taken into consideration if charge is established. Hence the order.

THE ORDER

5. The appeal is allowed by way of remand to the Original Adjudicating Authority for *de novo* adjudication order upon compliance of the above direction and for this purpose the order passed by the Commissioner of Customs (Appeals), Mumbai-III *vide* Order-in-Appeal No. MUM-CUSTM-APSC-APP-18/2022-23 dated 19.04.2022 is set aside.

(Dictated & pronounced in the open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad