

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI
REGIONAL BENCH
COURT NO.1**

Excise Appeal No. 85764 of 2014

(Arising out of Order-in-Original No. 40/SK/M-I/2013 dated 06.12.2013 passed by the Commissioner of Central Excise, Mumbai-I)

Prashant Rajnikant Mehta

9/12, A.K. Road, Andheri (E),
Mumbai 400 069.

Appellant

Versus

Commissioner of Central Excise, Mumbai-I

115, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai 400 020.

Respondent

WITH

Excise Appeal No. 85765 of 2014

(Arising out of Order-in-Original No. 40/SK/M-I/2013 dated 06.12.2013 passed by the Commissioner of Central Excise, Mumbai-I)

Deepak Rajnikant Mehta

9/12, A.K. Road, Andheri (E),
Mumbai 400 069.

Appellant

Versus

Commissioner of Central Excise, Mumbai-I

115, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai 400 020.

Respondent

WITH

Excise Appeal No. 85821 of 2014

(Arising out of Order-in-Original No. 40/SK/M-I/2013 dated 06.12.2013 passed by the Commissioner of Central Excise, Mumbai-I)

Commissioner of Central Excise, Mumbai-I

115, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai 400 020.

Appellant

Versus

Baranala International

4352, Chandni Chowk,
Delhi 110 006.

Respondent

Appearance:

Shri Bharat Raichandani, Advocate, for the Assessee Appellants
Shri Shambhoo Nath, Special Counsel, for Revenue

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

Date of Hearing: 04.12.2025

Date of Decision: 04.12.2025

FINAL ORDER No. 87037-87039/2025**PER: S.K. MOHANTY**

Feeling aggrieved with the impugned order dated 06.12.2013, Shri Prashant Rajnikant Mehta and Shri Deepak Rajnikant Mehta have filed these appeals on the ground that the provisions of Section 11A of the Central Excise Act, 1944 shall not be applicable in their case inasmuch they are not the proprietor of the exporting firm, who had availed fraudulent duty drawback in exportation of the goods. Revenue has also assailed the impugned order on the ground that learned adjudicating authority has failed to impose penalty on Shri Ravinder Choudhary, who is the proprietor of M/s. Baranala International.

2. Briefly stated, the facts of the case are that the exporter M/s. Baranala International had claimed the duty drawback on exportation of the goods. On investigation, the department had observed that the duty drawback was claimed fraudulently inasmuch as no goods were exported by the said firm. Accordingly, proceedings were initiated by the department against the present appellants, seeking recovery of the rebate amount already sanctioned along with interest and for imposition of penalties. In the earlier round, the matter adjudicated by the department vide order dated 27.03.2001 was assailed before the Tribunal and the Tribunal vide Order No. CI/1053-64/WZB/2002 dated 16.04.2002 had remanded the matter back to the original adjudicating authority, with the following observations:-

"5. Since we find gross denial of natural justice and the demand as made under Section 11A(1) do not appear to be made as per law, the impugned order is set aside & remitted back for Denovo adjudication."

3. Pursuant to the remand direction of the Tribunal (supra), the original authority took up the *de novo* adjudication proceedings and passed the present impugned order dated 06.12.2013, in confirming the demands, in line with the demands already confirmed in the earlier order dated 27.03.2001.

4. On careful reading of the order dated 16.04.2002 passed by the Tribunal, we find that at paragraph 5 therein, upon considering the findings recorded by the adjudicating authority, the Tribunal had concluded that M/s Baranala International is a proprietorship concern owned by Shri Ravinder Choudhary. On the basis of such findings that the proceedings are required to be initiated against the proprietor of the proprietorship concern for recovery of the already sanctioned rebate amount under Section 11A of the erstwhile Central Excise Act, 1944, the Tribunal has remanded the matter to the original authority.

5. Section 11A of the Act of 1944, as was existed at the material time, provided that "*The Central Excise Officer shall, within one year from the relevant date, serve notice **on the person chargeable with the duty** which has not been levied or paid or which has been short-levied or short-paid or to whom the **refund has erroneously been made**, requiring him to show cause why he should not pay the amount specified in the notice.*" (Emphasis supplied).

6. On reading the above quoted statutory provisions, it transpires that proceedings can be initiated by the department on the person, who is chargeable with the duty leviable under the statute. In the present case, since the original authority at the initial round of litigation has held that Shri Ravinder Choudhary is the proprietor of the exporting firm M/s Baranala International, the fact of which was also acknowledged by the Tribunal in the order dated 27.03.2001, in our considered view, proceedings under Section 11A *ibid* can only be initiated against such person and not on the present appellants viz., S/Shri Prashant Rajnikant Mehta and Shri Deepak Rajnikant Mehta. In other words, since the said appellants were not liable for payment of central excise duty and the refund benefit was granted in favour of the exporting firm M/s Baranala International, whose proprietor is somebody else, 11A proceedings cannot be invoked for recovery of the erroneously refunded amount of the rebate claim, from the present appellants. Therefore, we are of the considered view that the impugned order, confirming the adjudged demands on the appellants Shri Prashant Rajnikant Mehta and Shri Deepak Rajnikant Mehta, cannot be sustained.

7. Revenue has assailed the impugned order on the ground that Shri Ravinder D. Choudhary was absolved from the action proposed for in the show cause notice for imposition of penalty. It was pleaded by Revenue that non-imposition of penalty under the erstwhile Rule 209A in the impugned order on Shri Ravinder Choudhary is not proper and justified. Rule 209 of the erstwhile Central Excise Rules, 1944 deals with the situation of confiscation of goods and for imposition of penalty. It has been mandated that for certain offences itemized therein with regard to the excisable goods, the same shall be liable for confiscation and the manufacturer shall be liable to a penalty. In case of any offences committed by any person, other than the manufacturer, then Rule 209A ibid provides for imposition of penalty on such other person. On reading of both the statutory provisions contained in Rule 209 and 209A ibid, it transpires that confiscation of goods is the condition precedence for invocation of the provisions under both the said rules. It is an admitted fact on record that there was no proposal for confiscation of goods and the goods were in fact, not confiscated both in the earlier order as well as in the present impugned order passed by the lower authority. Thus, in absence of any proposal for confiscation of goods in the show cause proceedings, we are of the considered view that the provisions for imposition of penalty under Rule 209A cannot be invoked. Since the adjudicating authority has dropped the proposal for imposition of penalty on Shri Ravinder Choudhary, we are of the view that such order passed by the original authority is in conformity with the statutory provisions. Therefore, we do not find any merits in the appeal filed by Revenue.

8. In view of the foregoing discussions, the appeals filed by the appellants Shri Prashant Rajnikant Mehta and Shri Deepak Rajnikant Mehta are allowed and the impugned order to such extent, is set aside. The appeal filed by Revenue is dismissed.

(Order dictated in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)