Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 2

Customs Appeal No. 10128 of 2022-DB

(Arising out of OIA-MUN-CUSTM-000-APP-302-303-18-19 Dated- 25/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

RTI Spinners **........Appellant**

Gohana Road, Panipat
Panipat, Haryana

VERSUS

C.C.-MUNDRA **........Respondent**

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

WITH

Customs Appeal No. 10129 of 2022-DB

(Arising out of OIA-MUN-CUSTM-000-APP-302-303-18-19 Dated- 25/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Shri Sushil Ratanlal Garg **........Appellant**

House No.4, Sector-11, Huda Colony,
Panipat, Haryana

VERSUS

C.C.-MUNDRA **........Respondent**

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:

Shri. Sagar Rohatgi, Advocate for the Appellant
Shri. Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. A/ 10160-10161 /2024

DATE OF HEARING:05.01.2024
DATE OF DECISION:16.01.2024

SOMESH ARORA

In the present case, the appellants have been filed against the order of Commissioner (Appeals) as both appellant No. 1 i.e. M/s. RTI Spinners and appellant No. 2 i.e. Shri. Sushil Ratanlal Garg are aggrieved, inter alia, from the order of Commissioner (Appeals) wherein their appeals were rejected under Section 129E for lack of mandatory pre-deposit of 7.5%, as proof of mandatory pre-deposit had not been furnished. Appellants on the other hand, plead that they had deposited a sum of Rs. 7,81,861/- towards Customs Duty of Rs. 41,01,836/- which is reflected at paragraph 15 of the Order-In-Original, and the same was paid during investigation stage and therefore should have been taken into account towards mandatory deposit by the Commissioner (Appeals). However, Commissioner (Appeals) not taking the aforesaid amount paid during investigation into account dismissed their appeals under Section 129E without considering various contentions raised by them in grounds of appeal. The relevant paras of Order-In-Appeal reproduced below:-

> *"3. Aggrieved with the impugned order, both the appellants filed present appeals on the grounds mentioned therein. I find that both the appellants have requested for condoning the delay beyond the period of 60 days specified in section 128(1), in filing of these appeals. In this regard, I hold that the delay is not fatal and falls within the period of 30 days after the initial 60 days, which this appellate authority is competent to condone. Besides, it is already a settled principle of jurisprudence to take lenient view in such cases. Hence, in terms of the proviso to Section 128(1), I condone the delay in filing the both appeals. However, before going into the merits of the appeals for decision, I find that in both the appeals, condition of payment of 7.5% of the pre-deposit under Section 129E of the Customs Act, 1962, has not been fulfilled. The appellants were asked to comply with the provisions of said section vide this office letter dated 09.08.2018. Advocate for both the appellants vide common letter dated 17.08.2018 submitted that they had already paid the duty amount of Rs.7,81,861/- which is over and above the pre- deposit amount to be deposited by both appellants. On perusal of Annexure-A to show cause notice, total duty payable and differential duty payable is as under:*

Total duty payable	4883697
Duty paid	781861
Differential Duty Payable	4101836

> *From the above, it is obvious that the duty paid amount to the tune of Rs.7,81,861/- has already been adjusted towards total duty liability. Therefore, the amount of duty paid Rs.7,81,861/- cannot be adjusted towards the differential duty payment as it is already been adjusted as*

mentioned at Annexure-A to the show cause notice. So, appellant-1 should have paid 7.5% of the differential customs duty of Rs.41,01,836/-. Also appellant-2 is required to pay 7.5% of the total penalty imposed on him vide impugned order. Vide letters dated 04.09.2018, appellant-1 was requested to deposit 75% of differential duty and appellant-2 was requested to deposit 7.5% of total penalty imposed on him. The appellants were again reminded about the same vide letters both dated 11.01.2019. In spite of repeated reminders, the appellants have not produced proof of payment of 7.5% pre-deposit required to be made under Section 129E of the Customs Act, 1962. The appellants were also advised to appear for hearing on 02.01.2019, 16.01.2019 and 28.01.2019 or 31.01.2019. However, nobody turned up for personal hearing in respect of both the appeals till date. I find that sufficient chances were given in these cases for personal hearing. Also present appeals were filed in the month of July-2018 hence the same cannot be kept pending for indefinite period.

4. Section 129E of the Customs Act, 1962 stipulates that the Tribunal or Commissioner (Appeals) as the case may be, shall not entertain any appeal of Section 128 (relevant section in this case), unless the appellant has deposited seven and half percent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs. Even after enough opportunity and time given to the appellant, proof of mandatory pre-deposit has not been produced by them. Therefore, I have no option left but to reject both the appeals for non-compliance of the provisions of Section 129E of the Customs Act, 1962, without going into the merits of the appeals. I order accordingly."

2. The appellant on the other hand, pleads that the deposit made during investigation stage was sufficient compliance towards mandatory deposit and therefore, the Commissioner (Appeals) should have taken cognizance of the same and passed reasoned order rather than again insisting on pre deposit and denying them their legal remedy.

3. Learned AR justifies order of Commissioner (Appeals) by reiterating the same. Both sides also argued on merits.

4. Considered. We find that the claim of the appellant that they paid the duty amount of Rs. 7,81,861/- during investigation has not been considered properly by the Commissioner (Appeals). Specifically, their plea that as per Circular No. 984/08/2014-CE dated 16.09.2014 issued by CBEC the deposit made during the course of investigation or audit prior to be date on which

appeal is filed are to be taken for consideration of mandatory deposit. It is an agreed fact that as against total demand of Rs. 48,83,697/- amount of Rs. 7,81,861/- had been paid by the party and only differential duty of Rs. 41,01,836/- was payable by them. It is therefore clear that during the course of investigation Rs. 7,81,861/- was actually paid by the appellants which has been appropriated towards total duty of Rs. 48,83,697/-. Since, the aforesaid amount already stands remitted to the department, therefore, same can be counted towards 7.5% of total duty involved of Rs. 48,83,697/- and appeal on merits could have been maintained and decided by the Commissioner (Appeals). Since, the present order passed by the Commissioner (Appeals) is not on merits but it has dismissed the appeal under Section 129E, we, therefore remit the matter back to Commissioner (Appeals) with direction that aforesaid amount of Rs. 7,81,861/- be considered towards 7.5% of mandatory pre-deposit and appeal entertained accordingly. For the other appeal of Shri. Sushil Ratanlal Garg a separate pre deposit of duty or penalty will be required to be made to allow the appeal to be entertained. Therefore, as far as the appellant number-2 is concerned i.e. Shri. Sushil Ratanlal Garg, the matter is remitted back to allow one final opportunity to separately pre deposit the amount and then proceed to decide the appeal as per law, by the Learned Commissioner (Appeals). Non-deposit by Shri. Sushil Ratanlal Garg of such mandatory deposit, needless to say, will entail dismissal.

5. Matters are accordingly remanded back.

(Pronounced in the open court on 16.01.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI,