

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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 12707 of 2018

(Arising out of Order-in-Appeal No. KDL-CUSTOM-000-APP-016-18-19 dated 10.08.2018 passed by Commissioner (Appeals), Customs-Ahmedabad)

Agarwal Coal Corporation Pvt. Ltd.

Agarwal House, 2nd Floor, 5 Yeshwant Colony, Y N Road
Indore Madhya Pradesh-452003

...Appellant

VERSUS

Commissioner of Customs-Kandla

Custom House, Near Balaji Temple,
Kandla-Gujarat

...Respondent

APPEARANCE:

Shri P.D. Rachchh, Advocate appeared for the Appellant

Shri Jaspreet Singh Sukhija, Addl. Commissioner(AR) appeared for the Respondent

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

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER(TECHNICAL)

FINAL ORDER NO. 10617 /2025

DATE OF HEARING: 31.07.2025

DATE OF DECISION:31.07.2025

SOMESH ARORA:

The issue pertains to the exact date on which the order-in-original passed by Deputy Commissioner of Customs was received by the party. As per the party, though the order was passed on 11.08.2014 but it was received on 13.09.2017 against which they had filed appeal before the Commissioner (Appeals) on 05.11.2017. As per the appellant's advocate, they came to know that the order was passed once recovery action was initiated by the department. They procured the order by themselves and accordingly, filed the appeal which was well within the time.

2. Learned AR was asked whether there is any proof of service of order as that the Section 153 of the Customs Act at the relevant read as follows:

“SECTION 153. Service of order, decision etc.- Any order or decision passed or any summons or notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice or sending it by [registered post or by such courier as may be approved by the Commissioner of Customs;]

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the custom house.”

2.1 The AR informed the bench that they have the proof of dispatch of order but no proof of receipt by the party. If that be so, there is substance in the submission of the appellant’s advocate that they had not received the order, in the absence of any evidence by the department. We also note that the relevant Section now stands amended by bringing in presumption in law that the same deemed to be received after stipulated period of time. However, invoking the provisions of relevant time which mentions that the service is required by registered post and the evidence of the same being absent in the instant case, the assertion of the appellant is required to be accepted unless the department produces evidence to the contrary which is not on record with them.

3. In view of the foregoing, we are inclined to remit the matter back to the Commissioner (Appeals) who shall be at liberty, if so desired to demand an affidavit from the appellant to the effect that the date of receipt was as indicated by them and they had not received the order earlier. We also find that there are instructions existing of CBEC which indicate that an order should normally be passed by the adjudicating authority within 30 days of conclusion of personal hearing.

4. From our experience, we note that the same is not being done in number of cases. We therefore, highlight that due diligence is required by both sides. The appellant should also have ascertained the position after two three months from conclusion of personal hearing as to whether any order has been passed. We also desire that there should be meticulous compliance to the CBEC Instruction by all the Adjudicating as well as Appellate Authorities in this regard and orders should be passed after hearing as per the time limits of the CBEC so that both sides are

not put to inconvenience. With above instructions, since the matter on merits already stand remanded to the original authority, the Commissioner (Appeals) if so desired can after satisfying himself with the affidavit may also remand the matter to the Adjudicating Authority for verifying/ determining facts if any. The original authority in the meanwhile shall abstain from deciding the matter. Appeal allowed by way of remand.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha