

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT - I

Customs Appeal No. 23079 of 2014

[Arising out of the Order-in-Appeal No. 214/2014 Cus. (B)
dated 27.06.2014 passed by the Commissioner of Customs
(Appeals), Bangalore.]

M/s. JSW Steel Limited

JSW Centre, Bandra Kurla Complex
Bandra East,
MUMBAI – 400 026.

....Applicants

Vs.

The Commissioner of Customs

New Custom House,
Panambur,
Mangalore – 575 010.

....Respondents

Appearance:

Mr. M. S. Nagaraja, Advocate
Mr. K. A. Jathin, Dy. Com. (AR)

....For Applicants
... For respondents

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing : 28.06.2023
Date of Decision : 28.06.2023

FINAL ORDER NO. 20634 /2023

Per: JUSTICE DILIP GUPTA

This appeal has been filed to assail the order dated 27.06.2014 passed by the Commissioner (Appeals) dismissing the appeal filed by the appellant against order dated 13.12.2013 passed by the Assistant Commissioner of Customs, for the reason that the appellant failed to ensure compliance of the order dated 30.04.2014 passed by the Commissioner (Appeals) requiring the

appellant to deposit Rs.3.50 crores as a pre-deposit condition for hearing the appeal under Section 129A of the Customs Act, 1962¹.

2. It transpires from the records that against the order dated 13.12.2013 passed by the Assistant Commissioner finalizing the Bill of Entry by demanding differential duty of Rs.5,29,28,654/-, the appellant herein filed an appeal before Commissioner (Appeals) under Section 128 of the Customs Act, 1962, as it stood prior to 06.08.2014. The unamended section 129E required the appellant to deposit the entire amount, but the Commissioner (Appeals) had the power to dispense with such deposit subject to such conditions he deemed fit to impose so as to safeguard the interest of revenue.

3. While exercising this power, the Commissioner (Appeals), by an order dated 30.04.2014, required the appellant to deposit Rs.3.50 crores as a pre-deposit under Section 129A of the Customs Act within 21 days from the date of receipt of the order and report compliance within seven days thereafter.

4. The appellant filed an application for modification of the order dated 30.04.2014.

5. However, by an order dated 27.06.2014, the Commissioner (Appeals) rejected the appeal for non-compliance of the condition imposed by the order dated 30.4.2014 requiring the appellant to deposit Rs.3.5 crores.

1 Section 129A of the Customs Act, 1962

6. It is against this order dated 27.06.2014 that the present appeal has been filed.

7. Shri M. S. Nagaraja, learned counsel appearing for the appellant pressed the same grounds as were taken by the appellant in the stay application to contend that the condition imposed by the Commissioner (Appeals) for depositing Rs.3.5 crores would cause undue hardship to the appellant. Elaborating the contention, the learned counsel submitted that duty should have been charged only 5% instead of 10% under the Notification No.12/2012-Cus. dated 17.03.2012.

8. Shri K. A. Jathin, learned authorized representative appearing for the department has, however, supported the order passed by the Commissioner (Appeals) and has contended that as the appellant had failed to ensure compliance of the order passed by the Commissioner (Appeals) requiring the appellant to deposit Rs.3.5 crores towards pre-deposit, the Commissioner (Appeals) was justified in dismissing the appeal.

9. The issue that arises for consideration in this appeal is as to whether the Commissioner (Appeals) was justified in requiring the appellant to deposit Rs.3.5 crores towards pre-deposit. The adjudicating authority had directed for deposit of Rs.5,29,28,654/- as a differential duty. The contention of the learned counsel for the appellant is that this duty has been worked out at the rate of 10% instead of 5% as was required under the aforesaid Notification.

10. Having heard the learned counsel for the appellant and the learned authorized representative for the respondent, it would be appropriate if the appellant is asked to now deposit towards pre-deposit half of the amount of duty demanded by the adjudicating authority instead of Rs.5,29,28,654/-. This would come to Rs.2,64,64,327/-. If the amount of pre-deposit made by the appellant for filing this appeal of Rs.52,92,865/- is taken into consideration, the appellant would be required to deposit Rs.2,11,71,462/-.

11. This appeal is accordingly disposed of with a direction that if the appellant deposits an amount of Rs.2,11,71,462/- (Rupees Two Crores Eleven Lakhs Seventy-one Thousand Four Hundred and Sixty Two Only) towards pre-deposit within a period of two months from today and submits proof of the same before the Commissioner (Appeals), the Commissioner (Appeals) shall restore the appeal and decide the appeal on merits expeditiously since the appeal is of the year 2014.

12. The order dated 27.06.2014 passed by the Commissioner (Appeals) is set aside and appeal is allowed to the extent indicated above.

(Order pronounced in Open Court)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(R. BHAGYA DEVI)
MEMBER (TECHNICAL)**