CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 470 of 2012

[Arising out of Order-in-Appeal No. 188/2011-Cus dated 25.11.2011 passed by the Commissioner of Customs (Appeals), Bangalore]

Hindustan Petroleum Corporation Ltd ......**Appellant**
Mangalore LPG Import Facilities,
Mangalore, Karnataka

VERSUS

Commissioner of Customs, Mangalore ......**Respondent**
New Custom House, Panambur,
Mangalore, Karnataka

APPEARANCE:

Present for the Appellant: Ms. Neethu James, Advocate
Ms. Ashwini Nag, Advocate

Present for the Respondent: Sh. Neeraj Kumar, A.R.

CORAM:
HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21168/2023

DATE OF HEARING: 30.10.2023
DATE OF DECISION: 30.10.2023

PER D. M. MISRA

Heard both sides.

2. This appeal is filed against Order-in-Appeal No. 188/2011-Cus dated 25.11.2011 passed by the Commissioner of Customs (Appeals), Bangalore.

3. We find that the ld. Commissioner (Appeals) has dismissed the appeal for non-compliance with provisions of Section 129E of the Customs Act, 1962. He has not decided the issue on merit.

4. The ld. Advocate for the appellant submits that they have made pre-deposit of Rs. 2,50,000/- in compliance with Section 129E of the Custom Act, 1962, however, the said amount was deposited belatedly on 24.10.2011 i.e. one week only after the expiry of stipulated period of the interim order dated 07.09.2011. Since they have deposited the amount late, the ld. Commissioner (Appeals) has not decided the appeal on merit.

5. The ld. A.R. for the Revenue submits that since the ld. Commissioner (Appeals) has not decided the appeal on merit, the matter is to be remanded in view of the judgment of the Hon'ble Supreme Court in the case of *Collector of C.E., Calcutta vs. Alnoori Tobacco Products – 2004 (170) ELT 135 (SC).*

6. We find merit in the contention of the ld. A.R. Since the appellant has deposited the pre-deposit amount and complied with Section 129E of the Customs Act, 1962, and the ld. Commissioner (Appeals) has not decided the issue on merit,

therefore, the ld. Commissioner (Appeals) should hear the case on merit and dispose of the appeal accordingly. All issues are kept open. Needless to mention that a reasonable opportunity of hearing be extended to the appellant. In the result, the impugned order is set aside and the matter is remanded to the ld. Commissioner (Appeals) to decide the case on merit. Appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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