

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

C/20990/2018-SM

[Arising out of Order-in-Appeal No. 70/2018 dated 06/02/2018
passed by Commissioner of CUSTOMS, BANGALORE-I(Appeal).]

M/s. Jasky Exports Pvt. Ltd

Plot No 3C, Phase-I,
Doddanakundi Industrial Area,
Mahadevapura,
BANGALORE - 560048
KARNATAKA

Appellant(s)

Versus

Commissioner Of Customs,

C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
Bangalore - 560001
Karnataka

Respondent(s)

Appearance:

**Mr. RAGHAVENDRA B HANJER,
Advocate**

36 FLAT 202 SIRI SQUARE APARTMENTS
CHIKKALASANDRA MAIN ROAD
NEAR GANESH TEMPLE
CHIKKALASANDRA
BANGALORE - 560061
KARNATAKA

For the Appellant

**Mr. K. Murali,
Superintendent (AR)**

For the Respondent

Date of Hearing: 30/11/2018

Date of Decision: 30/11/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21821 / 2018

Per : S.S GARG

The present appeal is directed against the impugned
order dated 6.2.2018 passed by the Commissioner (A) whereby

the Commissioner (A) has rejected the appeal of the appellant on the ground of non-maintainability under the provisions of Section 128 of the Customs Act, 1962.

2. Briefly the facts of the present case are that the appellant was sanctioned duty drawback of Rs.2,57,322/- under Section 75 of the Customs Act, 1962. Since the appellant failed to produce bank realization certificate evidencing the receipt of export proceeds, show-cause notice was issued demanding the duty drawback along with interest. Original authority vide their order confirmed the demand of Rs.2,57,332/- along with interest and penalty of Rs.26,000/- under Section 117 of the Customs Act, 1962. Aggrieved by the said order, appellant filed appeal before the Commissioner (A) on the ground that they have realized the foreign exchange covered by both the shipping bills. Appellant also submitted that they did not receive the show-cause notice and therefore, they could not file reply and appear before the original authority for personal hearing and the original authority has decided the matter ex-parte. After considering the submissions of the appellant, the learned Commissioner (A) rejected the appeal on non-maintainability without going into the merits of the case.

3. Heard both the parties and perused the records.

4. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that during the relevant time, a part of the factory of the appellant was taken over by the Metro Rails for their project extension. He further submitted that they did not receive the show-cause notice and therefore, they could not file the reply and did not appear for the personal hearing and consequently, the original authority has passed the order ex-parte and they came to know about the ex-parte order when a notice was received from the Department for recovery. Thereafter, they filed an appeal before the Commissioner (A) which is in time from the date of receipt of the Order-in-Original but the Commissioner (A) has held that it is beyond the time as prescribed under Section 128 of the Customs Act, 1962. The Commissioner (A) has relied upon the decision of Singh Enterprises of the apex court but the said decision is not applicable in the facts and circumstances of the case as the order was passed ex-parte as the appellant have not received the show-cause notice and not appeared before the original authority.

The reasons given by the appellant appears to be bona fide as the part of the unit of the appellant was taken over by the Metro Rails and there were disruptions in the business activities of the appellant. In view of these facts, I deem it appropriate to set aside the orders and remand the matter back to the original authority to pass a fresh order after affording a reasonable opportunity of hearing and after complying with the principles of natural justice. Consequently, appeal is allowed by way of remand to the original authority to decide the case *de novo* after taking the reply of the appellant to show-cause notice.

(Operative portion of the Order was pronounced
in Open Court on **30/11/2018.**)

S.S GARG
JUDICIAL MEMBER

rv...