

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40248 of 2018

(Arising out of Order-in-Original No. 52342/2016 dated 29.12.2016 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai – 600 001)

M/s. Bhavani Diamond Tools

: Appellant

D.No. 04-006-661,
Pandariapuram, Ongole,
Andhra Pradesh – 523 002.

VERSUS

Commissioner of Customs,

:Respondent

Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

And

Customs Appeal No. 40249 of 2018

(Arising out of Order-in-Original No. 52342/2016 dated 29.12.2016 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai – 600 001)

**Shri M. Haribabu, Proprietor,
M/s. Bhavani Diamond Tools,**

: Appellant

D.No. 04-006-661,
Pandariapuram, Ongole,
Andhra Pradesh – 523 002.

VERSUS

Commissioner of Customs,

:Respondent

Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri R. Chandrasekaran, Advocate
For the Appellant

Shri S. Balakumar, Assistant Commissioner
For the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40490-40491 / 2023

DATE OF HEARING/DECISION : 26.06.2023

Order : [Per Bench]

Heard both sides.

2. The miscellaneous application is filed for urging additional grounds.

3. The learned Advocate would submit that the appellant was unable to participate during the adjudication proceedings on account of the fact that his son had met with an accident and subsequently died, due to which the appellant was undergoing Trauma. It appears that subsequently the appellant was also mentally depressed and unable to conduct his normal duties as he was suffering from insomnia and occasional delirium with intermittent attacks of hallucinations. For the above, the appellant had to be attended to by the Doctors frequently.

4. Citing the above, the learned Advocate would only seek the remand of the matter since the adjudication order has been passed without hearing the appellant though the appellant had all its supporting documents, but was unable to submit the same for the above reason.

5. *Per Contra* Shri S. Balakumar learned Assistant Commissioner while supporting the findings of the adjudicating authority, would submit that sufficient opportunities were given, but however, the appellant did not use any of such opportunities by participating in the adjudication proceedings.

6. In reply, the learned Advocate submits that the appellant was being attended to by Doctors, which is the reason for non-representation / non-appearance of the appellant before the adjudicating authority.

7. After hearing both sides, we find that the appellant deserves an opportunity since he has shown valid reasons for non-appearance / non-participation in the adjudication proceedings.

8. In view of the above, we set aside the impugned order and remand the matter back to the file of adjudicating authority for passing a *de novo* adjudication order.

9. The learned adjudicating authority shall afford reasonable opportunities to the appellant and after hearing, shall pass a speaking order in accordance with law. The appellant is also directed to participate in the adjudicating proceedings without seeking unnecessary adjournments and co-operate with the adjudicating authority and thereby enable the authority to conclude the adjudication proceedings at the earliest.

10. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand. All the contentions on merits are left open. The matter pertains to the year 2015, and hence, we deem it appropriate to direct the adjudicating authority to pass *de novo* Order-in-Original as early as possible, preferably within a period of three months from the date of receipt of this order by the jurisdictional Commissionerate.

(Order dictated and pronounced in the open court)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

MK