CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. IV

CUSTOMS Appeal No. 51420 of 2019

(Arising out of Order in Appeal No. IND-EXCUS-000-APP-403-18-19 dated 26.03.2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Indore)

M/s. Marina Enterprises **...Appellant**
49, Kothari Market,
Ratlam (M.P.)

Versus

Commissioner of Customs **....Respondent**
Central Excise & Central GST, Indore
Manikbagh Palace,
Indore (M.P.)

APPEARANCE:
Mr. Awadesh Kumar Pandey, Advocate for the appellant
Mr. P. Juneja, Authorised Representative for the Respondent

CORAM :HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: **<u>13.12.2019</u>**

FINAL ORDER No. <u>51741/2019</u>

RACHNA GUPTA

1. The present appeal has been filed to assail the order in appeal bearing no. 000-403/2018-19 dated 26.03.2019 vide which the appeal of the assessee has been rejected for want of mandatory pre-deposit of 7.5% of the amount of refund as was directed to be recovered from the assessee vide order in original no. 01/DC(Custom)/ICD Ratlam dated 12.12.2018 passed by the Deputy Commissioner.

2. The assessee herein had filed a refund of CVD in furtherance of notification no. 102/2007 dated 14.9.2007. The same was

sanctioned initially vide Order in original no. 15/REFUND/SAD/AC/ICD/RTM/17-18 dated 5.10.2017. However, on the subsequent information the Department noticed that the Chartered Accountant certificate as was furnished by the appellant at the time of seeking the said refund was forged and fictitious. Thus the impugned show cause notice no. 20-104/SAD/Refund/ICD/RTM/17-18 dated 10.9.2018 was served proposing the recovery of the amount of refund sanctioned i.e. Rs. 5,43,443/- along with interest and the appropriate penalties. The said proposal of recovery was confirmed vide the order in original no. 01/DC(Custom)/ICD Ratlam dated 12.12.2018. The appeal thereof was rejected vide order under challenge for statutory non compliance on part of the appellant.

3. I have heard Mr. Awadesh Kumar Pandey, Advocate for the appellant Mr. P. Gupta, Authorised Representative for the Respondent.

4. It is submitted on behalf of the learned counsel for the appellant that the account of appellant was seized by the DRI Indore and at the time of appeal before the Commissioner (A) a request was made for the amount of pre-deposit to be allowed to be released from their seized account. The Commissioner (A) instead of accepting the said request had dismissed the appeal for want of non compliance of section 129 E of the Customs Act 1962. It is also submitted that the said amount has been subsequently deposited vide challan dated 18.6.2019 as annexed on record. It is requested that the said deposit be considered as payment under

section 129 E of the Customs Act 1962 and the order under challenge be set aside.

5. Per contra learned DR has submitted that the appeal has been dismissed vide order dated 16.3.2019. The amount of pre deposit was paid post the said decision i.e. on 18.6.2019. Section 129 E is a mandatory statutory provision. Since admittedly the amount of pre deposit was not made at the time of filing the appeal before the Commissioner (A), there is no infirmity in the order dismissing the appeal by the Commissioner on that ground. The present appeal is accordingly prayed to be dismissed.

6. After hearing both the parties and perusing the order under challenge, it is observed that the Commissioner (A) has not passed order as far as the merits of the case is concerned. The appeal has been dismissed for non compliance of the statutory mandate of section 129 E of the Customs Act 1962. It is observed that the factum of the appellant's account to have been seized by the DRI officers was brought to the notice of Commissioner (A). A request of the appellant has also been acknowledged by the Commissioner to have been made before him praying for release of the seized account. The order under challenge is silent about the said request. However, has simply dismissed the appeal for want of mandatory pre deposit on 7.5 % of the amount involved. The said silence on part of the Commissioner (A) is held unreasonable.

7. Keeping in view that the said amount stands paid as of now, i.e. even prior to filing of the impugned appeal. Also keeping in view that procedural lapse may not be the cause for denying the

substantial relief especially when the lapse is reasonably explained, I deem it appropriate that an opportunity of being heard on merits be given to appellant. Accordingly, I hereby recall the order of Commissioner (A) remanding the matter back to him directing for taking a decision of the merits of the case. The payment dated 18.6.2019 be considered as it is under Section 129 E of the Customs Act 1962.

8. As a result, appeal stands allowed by way of remand.

(order dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)