CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 52207 OF 2019

(Arising out of Order-in-Appeal No. CC (A) Cus//D-I/NCT/222/2019 dated 29/05/2019 passed by the Commissioner of Customs (Appeals) New Delhi)

M/s Rainbow Logistics **...... Appellant**
WZ-112, Gali No.-6
Virender Nagar, Janak Puri,
New Delhi-110058

VERSUS

The Commissioner of Customs **....... Respondent**
Office of the Commissioner of Customs (General)
New Courier Terminal, IGI Airport
New Delhi

APPEARANCE:
Shri Sudhir Malhotra, Advocate for the Appellant
Shri Rakesh Kumar, Authorized Representative of the Department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51717/2021

DATE OF HEARING/ DECISION : August 03, 2021

JUSTICE DILIP GUPTA

This appeal seeks quashing of the order dated May 29, 2016 passed by the Commissioner of Customs (Appeals).[1] The Commissioner (Appeals) has dismissed the appeal solely for the reason that the statutory requirement of making the pre-deposit,

1 The Commissioner (Appeals)

as contemplated under section 129(E) of the Customs Act, 1962, was not complied with.

2. Shri Sudhir Malhotra, learned Counsel appearing for the Appellant submitted that the Appellant had clearly stated in the Serial No. 6 in Form No. CA 1 of the Appeal filed under section 128 of the Customs Act that the entire duty amount was deposited and appropriated in the original order and out of the total penalty, 25 per cent of the penalty imposed under section 114A had also been deposited by Challan dated August 24, 2017 but there is no consideration of this fact by the Commissioner (Appeals). Learned Counsel also pointed out that in case the Commissioner (Appeals) was not satisfied that the pre-deposit has not been made, an order should have been passed after considering the aforesaid aspect and an opportunity should have been granted to the Appellant to make the pre-deposit, but the appeal was dismissed without giving any opportunity to the Appellant to either explain the position or to make the deposit.

3. Shri Rakesh Kumar, the learned Authorized Representative of the Department stated that there is no error in the order passed by the Commissioner (Appeals), as the Appellant had not complied with the statutory requirement.

4. The submissions advanced by the learned Counsel appearing for the Appellant and the learned Authorized Representative of the Department have been considered.

5. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:-

> "4.2 In the instant appeal, the appellant has disputed the penalty of Rupees One Crore only imposed under Section 114AA of the Customs Act, 1962. They have not deposited the pre-deposit as mandatory under section 129E(i) of the Act, ibid. Because this appeal was clubbed alongwith those filed by the appeals filed by s/sh. Manoj Singal and Deepak Singal, the case reached up to the point of personal hearing. The statutory requirement of making pre-deposit has not been complied. Therefore, I hold the appeal as non-maintainable and pass the order accordingly."

6. In column No. 6 appellant had made the following statements.

Whether the duty or penalty or both deposited, if not whether any application for dispensing with such deposit has been made.	:	The entire duty of 46,72,631/- alongwith interest stands deposited which is appropriated vide the impugned order-in-original. Out of total penalty an amount of Rs. 11,68,500/- (being 25% of penalty) imposed under section 114A is also deposited vide challan dated. August 24, 2017.

7. It is, therefore, clear that there is no consideration of the statement made by the Appellant in the memo of appeal nor any opportunity was granted to the Appellant to make the pre-deposit. The Commissioner (Appeals) should have passed an appropriate order regarding the pre-deposit and if the Commissioner (Appeals) was not satisfied, an order should have

been passed and if the Commissioner (Appeal) was not satisfied, time should have also been given to the Appellant to make the pre-deposit.

8. The order dated May 29 May, 2016 passed by the Commissioner (Appeals), therefore, deserves to be set aside and is set aside. The Commissioner (Appeals) shall examine the issue relating to pre-deposit afresh and pass an appropriate order. If the Commissioner (Appeals) is not satisfied with the submissions of the Appellant regarding pre-deposit, some reasonable time should be granted to the Appellant to make the pre-deposit. If it is held that pre-deposit has been made or the appellant makes the pre-deposit within the time granted by the Commissioner (Appeals) and the appeal has to be heard, then the Commissioner (Appeals) shall hear the appeal and decide the Appeal on merits without being influenced by any of the observations made by the Commissioner (Appeals) in the connected two appeals namely Customs Appeal No. 52206 of 2019 and Customs Appeal No. 52209 of 2019.

9. The appeal is accordingly, allowed.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Rekha