

GRAM : CEGCANAL

REGISTERED/A.D

NOTICE UNDER SECTION 130 (1) OF THE CUSTOMS ACT, 1962/35-C(1) OF THE CENTRAL EXCISE SALT ACT, 1944.

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI - 110066.

F.No. E/COD/186/2000/NB(SM) in 2 Dated. 14/2/2001,  
9/385/2000/NB(SM)

From : The Registrar,  
CEGAT, New Delhi.

To, Mrs. Shashi Oberoi,  
B-544, New Friends Colony,  
New Delhi - 110065.

In the Matter of :-

Smt. Shashi Oberoi

APPELLANT

Vs.

CC New Delhi

RESPONDENT

I am directed to transmit herewith a certified copy of Final Order No. A/254/01/NB(SM)  
2 Misc M/46/01/NB(SM) Dated 25/1/2001 passed by the Tribunal under Section 129-B of the Customs Act, 1962, 35-C(1) of the Central Excise & Salt Act, 1944.

Copy to :-

1. Respondent :

CC, New Delhi

2. Advocate/Consultant : Mr. Kohli Chambers of Law  
41-A, Rajpat Nagar-II  
New Delhi - 24

3. C. C. C. E. (APPEAL) : New Delhi

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5. Asst.. Registrar, SRB, CEGAT, Chennai.

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13. J. C. D. R.

14. S. D. R. - NB(SM)

15. Library, CEGAT, New Delhi.

16. Bar Association.

17. Guard File

18. Office Copy

19. Hon'ble Members (1) Sh. V.K. Aggarwal, M(T)

20. Up to file (2)

RU  
Assistant Registrar

NB(SM)

RU  
Asst. Registrar

NB(SM)

CUSTOMS EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL,  
NEW DELHI

C/COD/186/2000-NB(SM)in& C/385/2000

(Arising out of Order-in-Original No. KK/CC/ICD/TKD/65/99 dated 2.11.1999 passed by the Commissioner of Customs, ICD, New Delhi)

Smt. Shashi Oberoi

Appellant,

Reptd. by Shri Vivek Kohli, Advocate

Versus

C.C., New Delhi

Respondent,

Reptd. by Sh. Swatantra Kumar, JDR

FINAL ORDER NO. A/254/01/NB(CS/M)  
MISE ORDER NO. M/46/01/NB(CS/M)  
DATED 25.1.2001

Repostable

Per V.K. Agrawal:

This is an application, filed by Ms. Shashi Oberoi, for condonation of delay in filing the appeal.

2. Shri Vivek Kohli, learned Advocate, mentioned that the Applicant filed a Bill of Entry No. 113308 dated 14.10.1998 for clearing a Toyota Prado Car;—that a show cause notice dated 14.12.1998 was issued to her for confiscation of car and imposition of penalty; that she was granted a personal hearing by the Commissioner on 14.1.1999 and a Note sheet Order was passed in which the vehicle was confiscated under Section 111(d) of the Customs Act with an option to redeem the same on payment of fine of Rs. 2 lakhs and a penalty of Rs.20,000/- was also imposed. The learned Advocate submitted that as the Applicant did not receive the detailed Order, she visited the office of the Respondent on a number of occasions and also wrote several letters; that an appeal against the Note-sheet Order was filed on 5.10.1999; that the Tribunal dismissed the appeal as non-maintainable on the ground

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that it was preferred against a Note-sheet Order, vide Order No.A/1418/99-NB(SM) dated 16.12.99; that this Order was passed in the absence of the Counsel who could not reach the Tribunal in time as he had got stuck in a traffic jam; that further the matter was only listed that day for hearing of a Miscellaneous Application for early hearing but was taken up and disposed of finally; that Restoration Application was also rejected by the Tribunal vide Misc. Order No. M/117/2000-NB(SM) dated 5.6.2000. The learned Advocate, further mentioned that the Applicant received an attested, but unsigned copy of the Order dated 2.11.1999 which was received by her on 6.11.1999; that the Applicant was under an apprehension that the impugned Order was not passed by the Commissioner who had heard the matter as he had been transferred around April, 1999; that as her appeal against the Note-sheet Order was already pending before the Tribunal, she thought that preferring another Appeal against the final Order, which was not even signed, would not be correct as in that circumstances there would be two appeals against the same cause of action, which is not permitted; that consequent to the dismissal of the Appeal against Note-sheet Order, she filed the present appeal. The learned Advocate also submitted that as the impugned Order is an unsigned Order, the period of limitation has not begun and the present appeal is not barred by limitation; that she has a good prima facie case on merits and appeal should be admitted and disposed of on merits. Reliance was also placed on the decision in the case of Collector, Land Acquisition Anantnag vs. Mst Katiiji, 1987 (28) ELT 185 (SC).

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3. Opposing the prayer, Shri Swatantra Kumar, learned D.R., submitted that the Applicant admittedly received the impugned Order on 6.11.1999; that the Tribunal while dismissing the appeal against Note-sheet Order, vide Final Order dated 16.12.99 mentioned specifically that "The party is at liberty to approach the Commissioner to obtain a speaking Order and to file an appeal against that Order;" that the Applicant did not follow the course of action suggested by the Tribunal; that even receipt of impugned Order does not seem to have been mentioned by the Applicant in the Application for restoration of Appeal; that appeal has been filed only in October, 2000, and the delay has not been explained satisfactorily and as such delay need not be condoned.

4. I have considered the submissions of both sides. The impugned Order was received by the Applicant on 6.11.1999 and the appeal has been filed only in October, 2000, that is after more than 11 months. The Tribunal while dismissing the appeal against Note-sheet Order advised her to get a speaking Order and file the appeal. Even then the Applicant did not choose to file the appeal though by that time the speaking Order had been received by her. ~~Then~~ No reason has been advanced by the Applicant as to why no appeal had been filed after their appeal against Note-sheet Order had been dismissed as 'non-maintainable'. In view of these facts, the ratio of the decision of the Supreme Court in Collector, Land Acquisition, supra, does not apply to the facts of the present matter. The delay in filing the appeal has, thus, not been satisfactorily

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explained. Accordingly the delay in filing the appeal is not condonable and the Application for condonation of delay is rejected. Consequently, the Appeal stands dismissed.

(V.K. AGRAWAL)  
MEMBER (TECHNICAL)

Dated 8th February, 2001

RK