IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 53084 of 2016

[Arising out of Order-In-Appeal No. CC(A) CUS /ICD/686/2016 dated 06.09.2016 passed by Commissioner of Customs (Appeals), New Delhi]

Kishan Lal Trading **Appellant**

Vs.

Commissioner of Customs **Respondent**
(Import) New Delhi

Appearance:

Shri J P Singh, Advocate for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 23.03.2017

FINAL ORDER NO . 52620 /2017

Per Archana Wadhwa:

After hearing both sides, we find that the original adjudicating authority confirmed the demand of duty and also imposed penalty upon the appellant who is a importer. The appellant chooses not to clear the goods and hence not to pay the duty. However, aggrieved with the imposition of penalty, they filed the appeal before Commissioner

(Appeals) after depositing the 7.5% of the penalty imposed upon in terms of provisions of section 35F of the Central Excise Act. The Commissioner observed that they should have also deposited 7.5% of the duty confirmed and held the appeal as not maintainable.

2. When the appellants have not contested the duty and have foregone the clearance of the goods, the question of deposit of 7.5% duty does not arise. As the appellant has already deposited the requisite percentage of penalty amount, for the purpose of hearing the appeal, which is only to challenge the imposition of penalty, we are of the view that the impugned order of Commissioner (Appeals) dismissing the appeal on the short ground is not justified. Accordingly, we set aside the same and remand the matter to the Commissioner (Appeals) for decision on merits.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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