CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Customs Early Hearing Application No. 30033 of 2024
in
Customs Appeal No. 30359 of 2020

(Arising out of Order-in-Appeal No. VIZ-CUSTM-000-APP-012-19-20 dt.26.06.2019 passed by Principal Commissioner of Customs & Central Tax (Appeals), Guntur)

Ocean Diving Centre Ltd
A/206, Krishna Smruti, Vile Parle
Mumbai, Maharashtra – 400 057

......Appellant

VERSUS

Commissioner of Customs
Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

......Respondent

Appearance
Shri Shailesh P. Sheth, Advocate for the Assessee.
Shri P. Amaresh, AR for the Revenue.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30173/2024

Date of Hearing: 29.02.2024
Date of Decision: 29.02.2024

[Order per: ANIL CHOUDHARY]

Heard the parties on the Early Hearing Application.

2. As the issue lies in a narrow compass because the Commissioner (Appeals) has dismissed the Appeal for want of Pre-deposit, we take up the Appeal itself for Hearing with the consent of the parties.

3. Learned Counsel for the Appellant states that as the period in dispute is 2006, wherein, the issue of classification of imported goods was involved, the Counsel for the Appellant was of the view that they shall be guided with regard to Pre-deposit under the erstwhile Sec 129E of the Customs Act (prior to amendment w.e.f. 06.08.2014). However, the learned Commissioner (Appeals), in the second round of litigation, observed from the impugned Order in Original dt.10.03.2019, that the provision for Pre-deposit as amended w.e.f. 06.08.2014

will be applicable and the Appellant is required to make Pre-deposit as per the amendment. The Appeal was dismissed for want of Pre-deposit.

4. Aggrieved, the Appellant is before this Tribunal. Learned Counsel for the Appellant informs that they have made the Pre-deposit on 27.08.2020 of Rs.44 lakhs, which is more than the required Pre-deposit @ 7.5% of the duty in dispute. Accordingly, he prays for allowing the Appeal by way of remand with the appropriate direction to the learned Commissioner (Appeals).

5. Learned AR for Revenue relies on the impugned order but does not have any objection for consideration of the dispute on merits by the Court of Commissioner (Appeals).

6. Considering the submissions and in the interest of justice, we take notice that Appellant has made the required Pre-deposit under Sec 129E of the Customs Act and accordingly, we allow this Appeal by setting aside the impugned order and remanding the matter to the file of the learned Commissioner (Appeals), who shall hear the Appellant and decide the Appeal on merits. Appellant is also granted liberty to appear with a copy of this order before the learned Commissioner (Appeals) and seek opportunity for hearing. As the matter is very old, we hope and trust that learned Commissioner (Appeals) will pass the Appellate Order within a period of 3 months from the date of first hearing.

7. EH Application disposed of and Appeal is allowed by way of remand.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda