CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO. 405

Custom Appeal No. 86581 of 2013

(Arising out of Order-in-Appeal No. 17/MCH/DC/CRARS/2013 dated 02.01.2013 passed by the Commissioner of Customs (Appeals), Mumbai.)

M/s Ashoka Buildcon Ltd. ....Appellant
Ashoka House Ashoka Marg Nashik
422011

VERSUS

Commissioner of Customs(Appeals), Mumbai ....Respondent
Mumbai Zone-I, New Customs House,
Ballard Estate, Mumbai 400 001

APPERANCE:

Ms. Rinkey Jassuja, Advocate for the Appellant
Shri Ramesh Kumar, Assistant Commissioner,Authorised Representative for the Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86150 / 2019

Date of Hearing: 15/04/2019
Date of Decision: 15/04/2019

PER: AJAY SHARMA

This appeal is filed against the order-in-appeal no. 17 / MCH / DC /CRARS/2013 dated 02.01.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.

2. At the outset, the learned Counsel for the Appellant has submitted that the principles of natural Justice were not followed in as much as the Appellate authority has not heard them before passing the order. Though, the appellate authority fixed three hearings on 13-9-2012, 09.10.2012 and 20-11-2012 respectively but hearing could not take place on these dates as they have sought adjournment. The learned Counsel further submitted that in view of the Hon'ble Gujarat High Court's decision in the case of *Regent Overseas Pvt. Ltd.* vs*. Union of India [2017 (6) G.S.T.L. 15(Guj.)]*, in order to give three adjournments, four dates of personal hearing are required to be fixed by the authorities and not three; fixing 3 dates would amount to grant two adjournments only and not three. Therefore, according to the learned Counsel, principle of natural justice has not been followed. On the other hand, the learned Authorised Representative for the Revenue has submitted that the Appellants have not filed appeals against the assessment order and, therefore, in view of the Hon'ble Supreme Court's decision in the case of *Priya Blue Industries Ltd.* vs. *Commissioner of Customs (preventive) [2004(172) E.L.T. 145(SC)]* the issue stands against the Appellants on merit also as the assessment order attained finality.

3. Heard both sides. We find that three opportunities of personal hearing were granted to the Appellants on 16.08.2012, 13.10.2012 and 29.10.2012respectively. As contended by the Counsel of the Appellant fourth hearing, that is to say three adjournments, was not granted by Commissioner (Appeals). Though the Learned

Commissioner, touched upon the merits of the case, we find that he should have granted an opportunity to the Appellants to be heard in the interest of justice. We find that justice needs to be done and at the same time, it needs to be manifestly done. We find that the learned Commissioner (Appeals) has not given the requisite number of adjournments and as such the proceedings are vitiated. We find that the principles of the natural justice have not been followed in this case. Therefore, we find that the case needs to go back to the Commissioner (Appeals) to decide the issue afresh after giving the Appellant due opportunity of being heard. At this stage, this Bench is not looking into the merits of the case. In view of the above, the appeal is allowed by way of remand in the above terms. We direct the authority to consider all issues afresh.

(Dictated & pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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