

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 86985 of 2018

(Arising out of Order-in-Original No. 109/2017-18/Commr/NS-IV/JNCH dated 21.02.2018 passed by Commissioner of Customs (NS-IV), Raigarh)

Shital Fibres Ltd.

.....Appellant

A-17, Focal Point (Extn), Jalandhar,
Punjab-144004

VERSUS

**Commissioner of Customs –
Nhava Sheva - I**

.....Respondent

JNCH,, Nhava Sheva, Tal. Uran,
Distt. Raigad, Maharashtra-400707

Appearance:

Shri Naveen Bindal, Advocate for the Appellant

Shri Roopam Kapoor, Authorized Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/88460/2018

Date of Hearing: 20.12.2018

Date of Decision: 20.12.2018

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant had claimed exemption from payment of duty in respect of clearance of consignments in terms of Notification No. 93/2004-Customs, dated 10.09.2004 against Advance Authorization No. 3010046474 dated 20.03.2006. For availing such duty exemption, the appellant had executed the requisite bond, binding itself to submit the proof of fulfilment of export obligation within the period prescribed in the said notification. However, the department observed that the appellant did not achieve the export obligation and accordingly, had not produced the Export Obligation Discharge Certificate (EODC) before the

jurisdictional customs authorities. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 21.02.2018 (for short, the impugned order), wherein the learned Commissioner of Customs has ordered for confiscation of the imported goods, with the option to redeem the same on payment of redemption fine. Further the impugned order also denied the benefit of notification dated 10.09.2004 and ordered for recovery of applicable interest as per conditions of the bond executed by the appellant. Besides, the impugned order also imposed penalty on the appellant under Section 112 (a) of the Customs Act, 1962. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. The learned advocate appearing for the appellant, at the outset, submitted that principles of natural justice have been violated inasmuch as the impugned order was passed, without affording adequate opportunity of personal hearing to the appellant. Thus, he prayed for remanding the matter to the original authority for a proper fact finding, after affording the opportunity of personal hearing to the appellant for effective and meaningful presentation of the case matter.

3. The learned AR appearing for Revenue has reiterated the findings recorded in the impugned order. With regard to the prayer made by the appellant, he has not expressed any reservations in support of remanding the matter back to the original authority.

4. Heard both sides and perused the records.

5. We find that the learned adjudicating authority has passed the *ex-parte* order in confirming the adjudged demands against the appellant, on the ground that neither the appellant had filed

any written submission nor appeared for personal hearing on the scheduled date, fixed on 12.07.2017 and 26.09.2017. In the grounds of appeal, the appellant has stated the reason for non appearance for personal hearing on the said dates, which according to us is reasonable and convincing. Further, with regard to affording of opportunity for personal hearing, the statutory provisions mandated that the adjournments shall not be granted more than three times to a party during the proceeding. In this case, it is evident that only two dates were fixed for hearing before passing of the impugned order. Thus, we are of the considered view that ends of justice would be met, if the appellant is provided with the opportunity of personal hearing for presenting its case in effective manner.

6. Therefore, after setting aside the impugned order, we remand the matter to the original authority for re-adjudication of the matter on the basis of the documents/records to be submitted by the appellant. The appellant is directed to participate in the adjudication proceedings and should not make any undue request for adjournment of the matter.

7. In the result, the appeal is allowed by way of remand to the original authority.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)