CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.

Customs Miscellaneous Application (EH) No. 85702 of 2019 and Miscellaneous Application (Stay) No. 85703 of 2019
(on behalf of Appellant)
Customs Appeal No. 86973 of 2019

(Arising out of Order-in-Original (communication) F. No. SG/INV-148/2018-19/'D'Cell/SIIB(I) JNCH dated 28.06.2019 passed by Commissioner of Customs, NS-V, Nhava Sheva)

M/s. VKC Nuts Pvt. Ltd. **Appellant**
B-23, Ground Floor,
Sector 63,
Noida, U.P. – 201 301.

Vs.

Commissioner of Customs, Nhava Sheva-V Respondent
JNPT, Custom House,
Nhava Sheva,
Raigad – 400 707.

Appearance:

Shri Niveet Seth, Advocate for the Appellant
Shri Bhushan Kamble, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. **A/86405/2019**

Date of Hearing: 31.07.2019
Date of Decision: 31.07.2019

PER: S.K. MOHANTY

Heard both sides.

2. The applicant has filed this miscellaneous application, seeking for early hearing of appeal. The reason explained in the miscellaneous application

seems reasonable for grant of early hearing. Accordingly, the miscellaneous application is allowed.

3. Since the issue lies in a narrow compass, with the consent of both sides, we take up this appeal for hearing and final disposal today.

4. The appellant in this case has filed the present appeal against the impugned communication dated 28.06.2019 of the Commissioner of Customs, SIIB, Raigad, wherein the request of the appellant for provisional release of the seized goods was not considered. On perusal of the statutory provisions, we find that sub-section (1) of Section 129A of the Customs Act, 1962 provides that a decision or order passed by the Commissioner as an adjudicating authority, can be appealed against before the Tribunal. The term ‘adjudicating authority’ has been defined in sub-section (1) of Section 2 *ibid*, to mean ‘any authority competent to pass any order or decision under this Act’. Rejection of the request for provisional release of the goods seized by the department cannot be considered as an order or decision passed or communicated under the Customs Act, 1962. Thus, the said communication dated 28.06.2019 of the learned Commissioner of Customs in the present case, cannot be considered as an order or decision for the purpose of sub-section (1) of Section 129A *ibid*, for entertaining the appeal by the Tribunal.

5. Therefore, the appeal filed by the appellant against the impugned communication dated 28.06.2019 is not maintainable before the Tribunal.

Accordingly, the appeal filed by the appellant is dismissed. The stay application filed is also disposed of.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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