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

Customs Miscellaneous Application No. 86031 of 2019
(on behalf of Appellant)
in
Customs Appeal No. 86761 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-1294/18-19 dated 29.03.2019/12.04.2019 passed by Commissioner of Customs (Appeals), Mumbai-III)

Shri Ashuram Modaji Moda **Appellant**
Proprietor, M/s. Ashapura Gold,
Shop No.4, Old Satta Galli,
Sheikh Memon Street,
Mumbai 400 002.

Vs.

Commr. of Customs (Prev.), Mumbai **Respondent**
New Custom House,
Ballard Estate,
Mumbai.

Appearance:

Shri Anil Balani, Advocate, for the Appellant
Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86974/2019**

Date of Hearing: 25.10.2019
Date of Decision: 25.10.2019

PER: DR. D.M. MISRA

Heard both sides.

2. This miscellaneous application has been filed seeking early hearing of the appeal on the ground that the issue revolves around in a very narrow compass. The gold and currency which have been seized were

lying for the last two years with the Customs; besides, the appeal has been dismissed by the learned Commissioner (Appeals) on the ground that the appellant failed to make pre-deposit in compliance with Section 129E of the Customs Act, 1962.

3. Learned Advocate, Shri Anil Balani, submits that the requisite amount of Rs.38.00 lakhs in compliance with Section 129E of the Customs Act has been deposited on 06.06.2019 while filing the appeal before this Tribunal, which includes 2.5% of the requisite amount in addition to 7.5% required to be deposited before the Commissioner (Appeals).

4. Since the issue involves in a very narrow compass, with the consent of both sides, after allowing the early hearing application, we take up the appeal for final disposal.

5. We find that the learned Commissioner (Appeals) dismissed the appeal of the appellant solely on the ground that they failed to comply with the provisions of Section 129E of the Customs Act, 1962, without examining the merits of the case. From the records, we find that the appellant subsequently, while filing the appeal before this forum, paid an amount of Rs.38.00 lakhs in compliance with Section 129E of the Customs Act. Since the learned Commissioner (Appeals) has not decided the issue on merits, in view of the principle of law laid down by the Hon'ble Supreme Court in the case of *CCE, Calcutta vs. Alnoori Tobacco Products – 2004 (170) ELT 136 (SC)*, the appeal is allowed by way of remand to the learned Commissioner (Appeals) to decide the appeal afresh

after affording an opportunity of hearing to the appellant. All issues kept open.

6. Appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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