CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85416 of 2014

(Arising out of Order-in-Appeal No. 169 (Adjn-Imp)/2014(JNCH)/IMP-156 dated 22.01.2014 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

Shri Lalit Jain **.... Appellant**
Director of M/s Miagro Ceamica Pvt. Ltd.
Nehru nagar, Opp. Hanuman Temple,
Kanjurmarg (E), Mumbai - 400042

Versus

Commissioner of Customs (Imp), Nhava Sheva **.... Respondent**
JNCH, Uran, Nhava Sheva – 400707

Appearance:

Shri Anil Mishra with Shri K.B. Menon, Advocate for the Appellant

Shri Bhushan Kamble, AC, Auth. Representative for the Respondent

WITH

Customs Appeal No. 85427 of 2014

(Arising out of Order-in-Appeal No. 170 (Adjn-Imp)/2014(JNCH)/IMP-157 dated 22.01.2014 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

M/s Miagro Ceamica Pvt. Ltd. **.... Appellant**
Nehru nagar, Opp. Hanuman Temple,
Kanjurmarg (E), Mumbai - 400042

Versus

Commissioner of Customs (Imp), Nhava Sheva **.... Respondent**
JNCH, Uran, Nhava Sheva – 400707

Appearance:

Shri Anil Mishra with Shri K.B. Menon, Advocate for the Appellant

Ms. Trupti Chavan, AC, Auth. Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85025-85026/2020

Date of Hearing: 07.01.2020

Date of Decision: 07.01.2020

Per: Dr. D.M. Misra

These two appeals are filed against Orders-in-Appeal No. 169 (Adjn-Imp)/2014(JNCH)/IMP-156 dated 22.01.2014 and No. 170 (Adjn-Imp)/2014(JNCH)/IMP-157 dated 22.01.2014 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva.

2. At the outset, learned Advocate for the appellant Shri Anil Mishra has submitted that the learned Commissioner (Appeals) has not decided the issue on merit but dismissed the appeal for non-compliance with the direction of pre-deposit under Section 129E of the Customs Act, 1962. He submits that the learned Commissioner (Appeals) directed them to deposit a total amount of Rs.3.00 lakhs within three weeks from the date of interim order i.e. 10.12.2013. Since the appellant failed to deposit the said amount, the appeals were dismissed for non-compliance with the provisions of Section 129E of the Customs Act, 1962. Aggrieved by the said order, they filed appeal before this Tribunal. This tribunal vide order dated 08.04.2014 directed them to deposit the amount of Rs.6,62,676/-, which they complied with on 02.06.2014. It is his contention that since the learned Commissioner (Appeals) has not decided the appeal on merit, therefore, the matter may be remanded to the learned Commissioner (Appeals). In support, he referred to the judgment of Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Chandigarh Vs. Smithkline Beecham Co.*

Healthcare Ltd. – 2003 (9) TMI 82-SC and State of Gujarat Vs. Hitarth Corporation – 2018 (2) TMI1383 -Gujarat HC.

3. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

4. We find that the Commissioner (Appeals) has not decided the appeal on merit but dismissed the appeal for non-compliance with the provisions of Section 129E of the Customs Act, 1962. Before this Tribunal, the appellant has deposited the directed amount vide order of this Tribunal dated 08.04.2014. Since the issue has not been considered on merit by the learned Commissioner (Appeals), following the principles laid down by the Hon'ble Supreme Court in *Smithkline Beecham Co. Healthcare Ltd. (supra)* and Hon'ble Gujarat High Court in *Hitarth Corporation (supra),* we remand the matter to the learned Commissioner (Appeals) to decide the case on merit. All issues are kept open. Needless to mention the appellant shall be given a reasonable opportunity of hearing before passing the fresh order. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

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

(P. Anjani Kumar)
Member (Technical)

Sinha