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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 85237 of 2019

(Arising out of Order-in-Appeal No. 122 & 123(CAC)/2018/(JNCH)/Appeal-I dated 24.09.2018 passed by Commissioner of Customs (Appeals) Mumbai-II)

M/s Sadhana Fashions **.....Appellant**
110 First Floor Arjun Marg, DLF City,
PH-1, Gurugram, Haryana – 122002.

VERSUS

Commissioner of Customs, Nhava Sheva-IV **.....Respondent**
JNPT, Custom House, Nhava Sheva, Raigad,
Maharashtra – 400707.

WITH

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Maharashtra – 400707.

<u>Appearance:</u>

Shri Mangesh S. Lokre, Advocate for the Appellant
Ms. Trupti Chavan, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87221-87222/2019

Date of Hearing: 29/11/2019
Date of Decision: 29/11/2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Appellant has filed these appeals against the impugned order dt. 24.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai-II. Vide the said impugned order, the Ld. Commissioner (Appeals) has rejected the appeals filed by the appellant on the ground that the requirement of pre-deposit provided under Section 129E of the Customs Act, 1962 has not been complied with before filing of these appeals.

2. When the matter was called for hearing today, the Ld. Advocate appearing for the appellant submits that though the requirement of pre-deposit was not complied with at the time of filing of the appeal before the office of the Commissioner (Appeals), but 10% of the disputed duty amount has already been deposited at the time of filing of appeal before the Tribunal. Learned AR appearing for Revenue has also accepted the fact that the appellant had already deposited 10% of the duty amount confirmed in the adjudication order.

3. In view of the fact that the appellant has complied with the requirement of Section 129E *ibid, though* belatedly, but the appeal cannot be rejected for making of such delayed deposit. Further, it is also noticed that the Commissioner (Appeals) has

rejected the appeals filed by the appellant solely on the ground of non-compliance of the requirement of Section 129E *ibid*. Since, merits of the case have not been discussed in the impugned order, I am of the view that the matter should be remanded to the Commissioner (Appeals) for deciding the appeals based on available records and on the basis of submissions to be made before him at the time of personal hearing.

4. Therefore, after setting aside the impugned order, the appeals are allowed by way of remand to the Commissioner (Appeals) for deciding the issue on merits. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

5. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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