CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85863 OF 2013

[Arising out of Order-in-Appeal No. BR/256/TH-I/2012 dated 22nd October 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

IDL Chemicals Ltd
IDL Chemicals Ltd. Lonad Village,
Tal. Bhiwandi, - 421 302 … ***Appellant***

versus

Commissioner of Central Excise
Thane I
Navprabhat Chambers, Ranade Road, Dadar West,
Mumbai - 400028 ***…Respondent***

APPEARANCE:

Shri Siddharth Mallinathan, Advocate for the appellant

Shri Xavier Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85894/2024

DATE OF HEARING:	20/03/2024
DATE OF DECISION:	12/09/2024

PER: C J MATHEW

M/s IDL Chemicals is before us challenging the findings in the order[1] of Commissioner of Central Excise (Appeals, Mumbai Zone – I which caused rejection of their appeal, against order of the original authority fastening differential duty liability of ₹ 1,75,980 on clearances effected to their concern at Hyderabad and to M/s Rajasthan Explosive and Chemicals Ltd (RECL) between January 1992 and April 1993 by adoption of methods prescribed in Central Excise (Valuation) Rules, 1975, both on ground of limitation and on merit.

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. We find from the submissions that the order of the original authority decided against the appellant despite absence of the assessee on the days fixed for personal hearing and, though this ground was pleaded in appeal, the first appellate authority too disposed off the dispute without the appellant being heard. This would be perfectly understandable had the impugned order concluded that the appeal was not maintainable for having been filed beyond the period prescribed in section 35 of Central Excise Act, 1944; such disposal did not warrant hearing the appellant on merits. However, the first appellate authority went on the affirm the order impugned before it on merit too which was unwarranted in the light of maintainability having been ruled out. The appellant herein submits that had they been offered opportunity

[1] [order-in-appeal no. BR (256)/TH-I/2012 dated 22nd October 2012]

they would have been able to overcome the impediment of maintability.

4. We take note that, by deciding on merits, the first appellate authority had accepted the explanation, as well as computation of delay of mere 21 days, for all practical purposes. However, as both the lower authorities had decided to the detriment of the appellant herein, on merits, without hearing them, the validity of the findings are jeopardized. In these circumstances, we find no alternative but to set aside the finding on the allegations in the notice and remand the matter back to the original authority to decide the matter afresh after affording the assessee opportunity to be heard.

(Order pronounced in the open court on 12/09/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*