CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 89785 OF 2014

(Arising out of Order-in-Appeal No. 3014 (ICD MULUND)/2014(JNCH)/EXP-149 dated 25.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Hind Ship Airways **.... Appellant**
13-A, 1st Floor, Masjid Building,
Old Bengalipura Street, New Crawford Market,
Mumbai – 400 003

Versus

Commissioner of Customs (General), Mumbai **.... Respondent**
New Custom House, Ballard Estate, Mumbai – 400 001

Appearance:

Shri D.H. Nadkarni, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85360/2025

Date of Hearing: 29.01.2025
Date of Decision: 29.01.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. The appellant has assailed the impugned order on the ground that dismissal of appeal for non-compliance of the requirement of pre-deposit provided under Section 129E of the Customs Act, 1962 is not proper and justified.

3. On examination of the case records, we find that the learned Commissioner of Customs (Appeals), Mumbai-II has dismissed the appeal on the sole ground that the appellant did not comply with the requirement of Section 129E *ibid* for depositing the requisite amount of pre-deposit for entertaining the appeal by him.

4. When the matter was called out for hearing, learned Advocate for the appellant submitted that due to financial difficulties, the requirement of pre-deposit under Section 129E *ibid* was not complied with at the time of filing of appeal before the learned Commissioner (Appeals). He further submitted that though the said requirement has not been complied with at the time of filing of appeal before the Commissioner (Appeals), but at the time of filing of appeal before the Tribunal, the appellant has complied with the requirement of pre-deposit of 10% of the adjudged demand before the Tribunal. Since the statutory requirement contained in Section 129E *ibid* has already been complied with, we are of the view that the matter is required to be taken up for hearing for a decision on merits. Since the learned Commissioner (Appeals) has dismissed the appeal on the ground of non-compliance of Section 129E *ibid* and merit of the case was not discussed or examined in the impugned order, we are of the firm opinion that the matter should go back to the learned Commissioner (Appeals) for deciding the appeal on merits.

5. Therefore, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) for passing of speaking order on the basis of available records and submissions, if any, to be made by the appellant at the time of hearing of the appeal. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the appeal afresh.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha