
(2023) 10 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Miscellaneous Application (EH) No.75642, 75643, 75644 Of 2023, Customs Appeal No.75283, 75284, 75285 Of 2023

Litan Karmakar And Others

APPELLANT

Vs

Commissioner Of Customs (Preventive), Kolkata

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Customs Act, 1962 — Section 128

Citation : (2023) 10 CESTAT CK 0041

Hon'ble Judges : Ashok Jindal, Member (Judicial);Rajeev Tandon, Member (Technical)

Bench : Division Bench

Advocate : Atika S.Ahmed, Subrata Debnath

Final Decision : Disposed Of

Judgement

Ashok Jindal, Member (J)

1. Today, the applications are listed for early hearing of the appeals filed by the appellants on the ground that it is case of seizure of gold, therefore, the matters be heard on priority basis.
2. After hearing the Id.Counsel for the appellants, we find that it is a fit case to grant the early hearing of the appeals. Accordingly, the applications for early hearing are allowed.
3. With the consent of both sides, we take up the appeals itself for final disposal.
4. The facts of the case are that it is a case of seizure of gold and during the adjudication proceedings, the appellants asked to supply the relied upon documents from the Adjudicating Authority. But initially, the relied upon documents were not supplied, but on the pursuance, the relied upon documents were supplied to them. Thereafter, the matters were heard without granting the personal hearing to the appellants. Therefore, the Adjudicating Authority passed

the order ex-parte. Thereafter, the appellants challenged the said order before the Id.Commissioner (Appeals), who dismissed the appeals as time barred. Therefore, the appellants are before us.

5. Perused the records and heard the parties.

6. We find that in the impugned order, the Id.Commissioner (Appeals) has recorded that the appeals have been filed by the appellants within a condonable period under Section 128 of the Customs Act, 1962 as they have filed the appeals before him after receiving the order of the Adjudicating Authority. We find that in two case, there is a delay of 22 days and 15 days respectively. The reason for delays has been explained by the appellants that due to summer vacations, they could not contact with the Counsel for preparation of their appeals papers. Therefore, the delays were caused but the Id.Commissioner (Appeals) without considering the request of the appellants, dismissed their appeals as time barred.

7. In that circumstances, we hold that the Id.Commissioner (Appeals) erred dispensing justice and therefore, the impugned order dismissing the appeals as time barred is set aside.

8. We further take note of the fact that in this case, the Adjudicating Authority has not given any personal hearing to the appellants, therefore, he fails to follow the principle of natural justice.

9. In that circumstances, after setting aside the impugned order, we remand the matter back to the Adjudicating Authority to decide the issue on merit after affording an opportunity of being heard to the appellants within 60 days from the date of receipt of this order in accordance with law.

10. The appeals are disposed off by way of remand.