

(2016) 04 RAJ CK 0094
In the Rajasthan High Court
Case No : Civil Writ Petition No. 348 of 2016

Pinkcity Colurstone Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Citation : (2016) 338 ELT 111

Hon'ble Judges : M.N. Bhandari and Vijay Kumar Vyas, JJ.

Bench : Division Bench

Advocate : Shri Sameer Jain and Ms. Mahi Yadav, Advocates, for the Petitioner;
S/Shri Vinay Mathur and Anil Mehta, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. By this petition, a challenge is made to the order dated 13-10-2015 passed by Commissioner of Central Excise and Customs (Appeals), Jaipur.
2. It is submitted that the impugned order has been passed on the appeals without giving opportunity of hearing. The appeals have been dismissed alleging non-compliance of the condition of pre-deposit given under Section 129E of Customs Act of 1962. Learned counsel for the assessee submits that the Bank guarantee was encashed in pursuance to the order of Deputy Commissioner of Customs. The amount therein was much more than seven and half per cent of the total amount demanded and challenged by way of appeal. The fact aforesaid was ignored by the Commissioner (Appeals) while passing of the order. The circular issued by the department on 16th September, 2014 covers the issue for maintaining an appeal.
3. Learned counsel appearing for the revenue contested the case to some length but taking into consideration that appeal has been dismissed in absence of pre-deposit though amount was recovered prior to filing of appeal and is more than seven and half per cent to the due amount, prayer is made to remand the case for hearing of the appeal on merit.

4. In view of the facts given by the learned counsel for the revenue, the condition of pre-deposit got satisfied on recovery of the amount of duty, the impugned order dated 13-10-2015 passed by Commissioner (Appeals) is set aside with a remand of case for consideration of appeal on merit. The parties are directed to remain present before the Commissioner (Appeals) on 2nd May, 2016.
5. The writ petition is allowed with the aforesaid.