

Zenith Limited Vs. Commissioner of Customs Acc,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2001

Appellant : Zenith Limited

Respondent : Commissioner of Customs Acc,

Judgement :

1. The show cause notice dated 29/01/1999 was issued to the appellant by Appraising Group VII, New Custom House, Ballard Estate, Mumbai. As per that notice the appellant before us was to show reason why duty amounting to Rs. 36,43,985/- should not be demanded, penalty contemplated by Section 112 and 114 of the Customs Act, be imposed.

Reply to this show cause notice was sent by the appellant to the authority which issued the show cause notice, Unfortunately the order in adjudication was passed by the Commissioner of Customs, Air Cargo wing. In his order-in-original dated 24/10/2000 it was observed "no reply was received to the notice till August, 2000 inspite of several reminders". He also states that nobody on behalf of the noticee turned up for personal hearing on 13/10/2000. Thereupon adjudicating authority confirmed the duty demand and also imposed a penalty of Rs. 3,50,000/-.

2. Show cause notice was issued by the Custom House, Mumbai. Reply which was filed before that authority, which issued the show cause notice, was not available with that authority which passed the adjudication order. So the adjudication order was passed without knowing the contention raised by the parties for no fault of the party concerned. Record relating to the show cause

notice were not transferred to the adjudicating authority by the department. That authority has not verified all the contentions raised by the noticee.

Therefore we set aside the order passed by the adjudicating authority and remand the case back to that authority for denovo consideration and disposal after affording a reasonably opportunity of being heard to appellant herein.

3. The appeal is allowed in the above terms. The stay petition moved also disposed off accordingly.

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