

**Sameer Industries and Others Vs. Commissioner of Customs, Kandla**

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**SooperKanoon Citation :** [sooperkanoon.com/24075](http://sooperkanoon.com/24075)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jun-26-2001

**Appellant :** Sameer Industries and Others

**Respondent :** Commissioner of Customs, Kandla

**Judgement :**

1. These appeals are taken up for disposal with consent of both sides after waiving deposit.
2. The order impugned in these appeals was passed by the Commissioner of Central Excise, Kandla (wrongly typed as Commissioner of Customs in the order), adjudicating on the notice issued to each of the appellants on 22.4.1998. The notices demanded Central Excise duty on goods cleared by each of the appellants from their factory in the Kandla Free Zone to buyer in the domestic tariff areas between August 1996 and April 1997.

The notices did not invoke the extended period contained in the proviso to sub-section (1) of Section 11A of the Act and were signed by the Assistant Commissioner.

3. The common counsel for the appellants contends that the notices are barred by limitation. He further contends that the basis for the demand contained in the notice, that the appellant has failed to fulfil the prescribed export obligation is itself wrong. Subsequent to the issue of the notice, each of the appellants has obtained evidence in the form certificates from the jurisdictional Preventive Officer of

Customs that the export obligation has been fulfilled within the extended period granted to it by the Development Commissioner of the Zone.

4. Neither of these grounds was taken before the Commissioner nor in the appeal memorandum. They emerged in the course of discussion in the hearing before us. We therefore think it appropriate that the Commissioner should now consider both these grounds.

5. Accordingly, we allow these appeals, set aside the impugned order and remand the matter to the Commissioner. He shall consider the submissions which the counsel for the appellants undertakes to submit within two months from the receipt of this order, and adjudicate upon each notice in accordance with law.

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