

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 52381 of 2019

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/Prev/535/2019-20 dated 17.6.2019 passed by Commissioner of Customs (Appeals) New Customs House, Near IGI Airport, New Delhi-110037)

Sky Airways

P-3, New CIT Road, 2nd Floor,
Kolkata, 700073

.....Appellant

VERSUS

Commissioner of Customs,(Appeals)

New Customs House, Near IGI Airport,
New Delhi-110037

.....Respondent

APPEARANCE:

None for the Appellant

Shri Rakesh Kumar, Authorized Representative of the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING/DECISION: August 12, 2022

FINAL ORDER NO. 50715 /2022

JUSTICE DILIP GUPTA

This appeal was filed on September 30, 2019 and despite notice having been served upon the appellant on June 24, 2022, no one has appeared on behalf of the appellant.

2. This appeal is directed against the order dated June 17, 2019 passed by the Commissioner of Customs (Appeals)¹ by which the order dated March 19, 2018 passed by the Assistant Commissioner has been upheld and the appeal has been rejected. The Assistant Commissioner, by the aforesaid order, rejected the refund claim of Rs. 3,00,82,889/- filed by the appellant. A perusal of the order shows that, the Assistant Commissioner rejected the

1. The Commissioner (Appeals)

contention advanced by the appellant that the aforesaid amount, which was voluntarily deposited by the appellant during the investigation, should be treated as a pre-deposit amount and should be refunded as the appeal filed by the appellant for setting aside the order confirming the demand was allowed the demand was set aside with a direction to the adjudicating authority to pass a fresh order in the light of the directions issued by the Tribunal.

3. Earlier, a show cause notice dated August 03, 2009 was issued to the appellant to show cause as to why customs duty amounting of Rs.3,00,82,889/- be not demanded under section 28 of the Customs Act 1982², and the helicopter should not be confiscated under section 111(d) and section 111(o) of the Customs Act and fine should not be imposed. This show cause notice was adjudicated upon by an order dated May 19, 2010. The helicopter was confiscated with an option to redeem the same after payment of redemption fine and the demand of duty was confirmed. It was, however, appropriated as the appellant had already deposited the said amount during investigation. It is against this order that the appellant had earlier filed an appeal before this Tribunal. This appeal was heard on June 16, 2017 with seven other appeals. An issue that was raised by the appellants was regarding the jurisdiction of the Commissioner of Customs (Preventive) to issue the show cause notice. The operative part of the order passed by the Tribunal is reproduced below:

"13. By following the ratio laid down by the Hon'ble High Court of Delhi in the case of BSNL (Supra) as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Hon'ble

Supreme Court decision in the case of Mangli Impex and then, on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision the status quo will be maintained

14. In the result, appeals filed by the assessee/ Department are allowed by way of remand.”

4. Learned authorized representative appearing for the Department has stated that after the remand, the matter has not been adjudicated upon by the Assistant Commissioner.

5. The appellant had filed a refund claim on October 16, 2017 pursuant to the order passed by the Tribunal contending that it is entitled to refund Rs.3,00,82,889/- since the order of the adjudicating authority was set aside by the Tribunal. This refund claim was rejected by the Assistant Commissioner by order dated March 19, 2018. The contention of the appellant that the amount deposited voluntarily during investigation should be treated as amount towards the pre-deposit was rejected for the reason that it was not an amount deposited at the time of filing of the appeal. The Assistant Commissioner also noted that after setting aside the order passed by the Assistant Commissioner, the Tribunal had remanded the matter to the Assistant Commissioner to pass a fresh order with regard to the jurisdiction of the officer to issue the show cause notice after the Supreme Court decided the issue pending before the Supreme Court. The Assistant Commissioner also noticed that the Tribunal had also directed the parties to maintain status quo till the matter was decided afresh pursuant to the order passed by the Tribunal. It is this order dated March 19, 2018 that was assailed before the Commissioner (Appeals), who by order dated June 17, 2019 dismissed the appeal.

6. Even though learned counsel for the appellant has not appeared, we have perused the file and have also heard Shri Rakesh Kumar, learned authorized representative appearing for the department.

7. We are satisfied that the order passed by the Commissioner (Appeals) does not suffer from any infirmity so as to call for any interference by the Tribunal.

8. The appellant had not deposited the amount towards the pre-deposit and in any view of the matter the Tribunal had even after setting aside the order appealed against remanded the matter for a fresh adjudication with a direction to the parties to maintain status quo. The appellant was bound by this order of status quo passed by the Tribunal and could not have asked for the refund of the amount deposited by the appellant voluntary during investigation, which amount had been confirmed and appropriated by the order impugned before the Tribunal in the earlier round of proceedings.

9. Therefore, there is no merit in this appeal. It is, accordingly, dismissed.

(Order dictated and pronounced in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)