



TAX ALERT

***Commissioner of Customs
(Appeals) cannot put a pre-
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2016-TIOL-547-CESTAT-MAD

Issue: Whether Commissioner of Customs (Appeal) has power to put a precondition while remanding the case back for afresh adjudication to the lower authority?

Facts: The Commissioner (Appeals) has set aside the O-I-O passed by the Dy. Commissioner of Customs Special Valuation Branch (SVB), Chennai and remanded back to DC (SVB) to decide the case freshly by imposing pre-condition to pay EDD (Extra Duty Deposit) of 5% of the invoice value and also directed to assess the bill of entry provisionally till the issue of fresh order. Company filed an appeal before tribunal against the order of Commissioner (Appeals) imposing 5% EDD.

Revenue Contention: Revenue relied on the decision of the Tribunal in the case of Doosan Infracore India Pvt. Ltd. Vs. CC, Chennai and submitted that as per the Board's Circular No. 11/2001 dated 23.02.2001 only 1% of EDD has been ordered till finalization of provisional assessment.

Appellant Contention: The appellant contended on following grounds:-

- Under section 128A of the Customs Act, the Commissioner (appeals) has power to modify/annul/remand with direction if any but it has no jurisdiction to direct payment of 5% EDD.
- It further submitted that the directions can be limited to proceedings. It cannot order 5% EDD when order was set aside and remanded back to the adjudicating authority.
- It also submitted the case of National Oxygen Ltd. Vs CC, Chennai where the Hon'ble High Court held that while remanding the case back, the Tribunal cannot impose pre-condition.

Tribunal's Observation: The Hon'ble Tribunal taking reference of cases* observed that imposing pre condition will prejudice the mind of adjudicating authority. It also observed that Revenue relying on the case of Doosan Infracore India Pvt. Ltd. is not relevant to the facts of present case, as the said order was only an interim order on different facts.

Held: Hon'ble Tribunal allowed the appeal and stay petition was disposed off.

**Terumo Penpol Ltd. Vs. CC, 2015-TIOL-1423-HC-MAD-CUS*

**National Oxygen Ltd., Vs. CC, Chennai, 2008-TIOL-368-HC-MAD-CUS*