

## **Penalty is to be imposed on the erring Government official for non-compliance with the orders of Tribunal**

The CESTAT, Allahabad in the case of M/s. Mahesh & Co. Pte Ltd. Singapore v. Commissioner of Customs Noida [Customs Miscellaneous Application 2 of 2022 dated November 9, 2023], imposed a penalty of Rs.2,00,000/- for causing delay in implementation of the earlier order of the Tribunal without any justified reason, and said amount needs to be paid by the erring Commissioner. Also, the Tribunal referred the matter to the Hon'ble Allahabad High Court for initiation of Contempt proceedings against the concerned Commissioner.

### **Facts:**

The Revenue Department ("the Respondent") aggrieved by the Final Order No. 71733-71742 of 2019 dated September 12, 2019 ("the order") and subsequent order passed by the CESTAT, Allahabad ("the Tribunal"), filed Custom Appeal before the Hon'ble Allahabad High Court. The High Court admitted the application and appeal but no stay was granted. However, the Respondent officers did not allow the re-export of the gold jewelry as directed by the order of the Tribunal. Aggrieved, the Appellant filed an application under Rule 41 of the CESTAT (Procedure) Rules, 1982 ("the Rules"). The Tribunal allowed further time for the Respondent to pursue their stay application before the High Court. Thereafter, the miscellaneous application filed by the Appellant was allowed and as per the order, the Appellant was permitted to re-export the jewellery.

As per the directions stated in the Order, the Appellant submitted the required bank guarantees along with the order and requested the Respondent to permit the re-export of the gold jewellery as per the Order, but the Respondent did not permit the Appellant to re-export the jewellery till today. The Appellant filed another Miscellaneous Application directing the Respondent to comply with the earlier orders of the Tribunal which was allowed and the Tribunal directed the Respondent to strictly comply with the order passed and allow re-export of goods within 10 days and report compliance in writing. Aggrieved, the Respondent filed Application under Rule 41 of the Rules for implementation of the Order.

### **Mahesh & Co. Pte Ltd. Singapore v. Commissioner of Customs Noida (CESTAT, Allahabad)**

**Issue:** Whether the penalty be imposed on the erring Government official for non-compliance with the orders of the Tribunal?

### **Held:**

The CESTAT, Allahabad in the case of Customs Miscellaneous Application No. 70117 of 2022 held as under:

- Noted that, after the order passed, specific direction have been given twice but the Respondent Authorities have not permitted the re-export of goods even after giving the Bank Guarantee. The Respondent officers are acting in defiance of the Orders passed by the Tribunal, therefore violating the principles of natural justice.
- Noted that, the Central Board of Excise and Customs vide Circular No. 1035/26/2016- CX dated July 4, 2016 has directed that the order of the Tribunal needs to be implemented even if stay

application against the orders of the Tribunal is pending before the High Court or Supreme Court.

- Opined that, as the Respondent Commissioner has acted in defiance of the authority of the Tribunal, the present case is fit for the imposition of cost on the Respondent Commissioner to ensure that the concerned Respondent Officer understands the meaning of judicial discipline.
- Held that, the matter needs to be referred to the Hon'ble High Court for initiation of Contempt proceedings against the concerned Commissioner.
- Further Held that, for causing delay in implementation of the earlier order of the Tribunal without any justified reason, the cost of Rs. 2,00,000/- should be imposed and said amount needs to be paid by the erring Respondent Commissioner.
- Directed that, the concerned Respondent officer should implement the order and matter be listed for reporting compliance.

**Mahesh & Co. Pte Ltd. Singapore v. Commissioner of Customs Noida (CESTAT, Allahabad)**