Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOM Appeal No.11359 of 2016

(Arising out of OIA-JMN-CUSTM-000-APP-246-282-15-16 dated 29/03/2016passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)

Mahavir Inductomelt Pvt Ltd **.........Appellant**
2286/6, Opp. Madhav Baug,
Waghwadi Road,
Bhavnagar, Gujarat

VERSUS

C.C.-Jamnagar(prev) **.........Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE:
Shri. Rahul Gajera, Advocate for the Appellant
Shri. Sanjiv Kinker, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11682 /2021

DATE OF HEARING: 27.04.2021
DATE OF DECISION:27.04.2021

RAMESH NAIR

Shri. Rahul Gajera, Learned Counsel appearing on behalf of the Appellant at the outset submits that their appeal has been dismissed on time bar on the ground that the appeal before the Commissioner (Appeals) was filed even beyond condonable period of 30 days. It is his submission that from the date of receipt they had filed an appeal though after 60 days but within 30 days of condonable period along with COD application This factual aspect has not been properly considered by the Learned Commissioner (Appeals).

2. Shri. Sanjiv Kinker, Learned Authorized representative appearing on behalf of the revenue submits that the Learned Commissioner (Appeals) has given proper finding in the impugned order. Therefore, there is a delay even beyond 30 days of condonable period. Hence, the appeal was rightly dismissed on time bar.

3. We have considered the submissions made by both the sides. As per the submission of Learned Counsel the date of communication of the order mentioned in the appeal memo filed to the Commissioner (Appeals) is 30th August, 2014 and appeal was filed on 24th November, 2014 which is

recorded by the Commissioner (Appeals). If this dates are taken as correct the appeal was filed within 90 days. If Learned Commissioner (Appeals) has any doubt regarding the date of Communication he should have called for verification report regarding actual date of communication of order from the office of the adjudicating authority, without doing this process the finding of the Learned Commissioner (Appeals) is on assumption and presumption basis which cannot sustain. Since, this fact has not been verified even COD application needs to be reconsidered. Accordingly, we set aside the impugned order only in respect of the present appellant and allow the appeal by way of remand to the adjudicating authority to pass afresh order in respect of COD application and appeal. All other cases are adjourned and to be listed on 7th June, 2021.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi