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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10082 of 2016

(Arising out of OIA-VAD-EXCUS-003-APP-07-15-16 dated 28/05/2015 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Tinna Rubber & Infrastructure Ltd **......Appellant**
Tinna House No. 6,
Sultanpur (mandi Road), Mehrauli,
New Delhi, Delhi

VERSUS

C.C.E & S.T.-Silvasa **......Respondent**
Commissioner Central Excise,
Customs & Service Tax, Silvassa, 4th floor,
Adarsh Dham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
VAPI, Gujarat

APPEARANCE
Shri S Suriyanarayanan, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 10406/2024

DATE OF HEARING/ DECISION: 07.02.2024

RAMESH NAIR

The Learned Commissioner (Appeals) dismissed the appeal on the ground that appeal was filed with a delay of 4 days and also the appellant have not made pre-deposit as per Section 35F.

2. Shri S Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that as regard the pre-deposit, the appellant while filing the appeal before this Tribunal deposited 10% as pre-deposit. As regard delay, he submits that appeal was admittedly sent by speed post on 25th March, 2015. However, the same was delivered to office of the Commissioner (Appeals) on 1st April 2015 since the order-in-original was received by appellant on 28.01.2015 there is a delay of 4 days. However since appeal was dispatched well within the normal period even if there is any delay the same should have been Condoned by the Commissioner

(Appeals). He placed reliance on this Tribunal's decision in the case of Re-Rolling Mills Vs. Collector of Central Excise 1990 (49) ELT 298 (Tri-Ahmd).

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that as regard the pre-deposit since appellant have deposited 10% the compliance of Section 35F stands made. As regard the delay in filing the appeal, relying upon this Tribunal's decision in the case of Re-Rolling Mills (Supra) if the appeal has been dispatched well within the time and the delivery has been delayed by Postal Authority, the same cannot be considered as delay in filing the appeal. Accordingly, even if there is any delay, the same is condoned.

5. Since, the Learned Commissioner (Appeals) has not decided the matter on merit. The appeal is dispose of by way of remand to Commissioner (Appeals) to decide the matter on merit.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha