CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10011 of 2024-DB

[Arising out of the OIA No. JMN-CUSTM-000-APP-113-23-24 dated 03.10.2023 passed by Commissioner (Appeals), Customs, Ahmedabad.]

Kumar Impex .... **Appellant**

4/5203, Krishna Nagar, Karol Bagh,
New Delhi - 110005

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
4th Floor HUDCO Bhavan Ishvar Bhuvan Road
Navrangpura, Ahmedabad 380009

APPEARANCE :

Shri H K Hirani, Consultant for the Appellant
Shri SS Vikal, Assistant Commissioner AR for the Respondent

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

DATE OF HEARING : 12.03.2024
DATE OF DECISION: 18.06.2024

FINAL ORDER NO. 11344/2024

C.L. MAHAR :

The brief facts of the matter are that the present appeal has been filed by the appellant against the impugned order-in-appeal dated 03.10.2023 wherein the appeal of the appellant has been rejected by learned Commissioner (Appeals) on the ground that it is barred by limitation i.e. to say that as per the provisions of Section 128 of Customs Act, 1962, the appeal before the Commissioner (Appeals) needs to be filed within a period of 60 days from the date of communication of the order. As per the provisions of Section 128(1), this period of 60 days can further be relaxed by 30 days by Commissioner (Appeals). Thus, the law requires that appeal before Commissioner (Appeals) should be filed mandatorily within a period of 60 days, however if the appellant is able to show legitimate reasons for delay, the period of 60 days can be extended by 30 days by Commissioner (Appeals).

2. As per record of the appeal, it is a matter of fact that the impugned order-in-original dated 15.07.2022 was received by the appellant on 20.07.2022 and the appeal before Commissioner (Appeals) was filed on 20.10.2022 i.e. after 92 days. The learned Commissioner (Appeals) has rejected the appeal on the ground of limitation as prescribed under Section 128 of the Customs Act, 1962 as he has no power to condone the delay beyond 30 days as per proviso 1 to Section 128 of the Customs Act, 1962.

3. We have heard both the sides. It will be relevant to have a glance at the provisions of Section 128 of the Customs Act, 1962:-

> **Appeals to [Commissioner (Appeals)]. SECTION 128.** — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :
>
> [**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]
>
> The Commissioner (Appeals) may, if sufficient cause is [(1A) shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :
>
> **Provided** that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]
>
> Every appeal under this section, shall be in such form and (2) shall be verified in such manner as may be specified by rules made in this behalf.

It is clear from the plain reading of Section 128(1) that the normal period for filing appeal before the Commissioner (Appeals) is 60 days from the date of communication of the order. However, the same can be extended by further period of 30 days by Commissioner (Appeals) on sufficient cause being shown by the appellant for delay in filing the appeal. It is apparent from the reading of Section 128 that the Commissioner (Appeals) has not been provided to condone the delay beyond the period of 30 days. In this regard, the Hon'ble Supreme Court in the case of *Singh Enterprises reported under 2008 (3) SCC 70* wherein the HSC has interpreted the Section 35F of Central Excise Act, 1944 which is *pari-materia* to Section 128 of the Customs Act, 1962. The relevant portion of Hon'ble Supreme Court decision reads as follows:-

> "**8.** The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

4. Thus, we find that it is apparent from record of the appeal that maximum period to condone the delay available with Commissioner (Appeals) is only 30 days. Therefore, we find that since the delay has been more than 30 days in filing the appeal, the appeal has rightly been rejected by the Commissioner (Appeals).

5. In view of the above and following the Hon'ble Supreme Court decision (supra), we do not find any legal infirmity in the impugned order-in-appeal. Therefore, we uphold the impugned order. The appeal is accordingly dismissed.

(Pronounced in the open court on 18.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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