

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS APPEAL NO. 10861 OF 2019

(Arising out of OIA-KDL-CUSTM-000-APP-097-18-19 dated 31.01.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

UNIWORLD SUGAR PVT. LTD.
SURVEY NO 145 VILLAGE VERSAMEDI,
KUTCH-KUTCH-GUJARAT

.....Appellant

VERSUS

C.C.-KANDLA
Custom House, Near Balaji Temple,
Kandla, Gujarat

.....Respondent

APPEARANCE:

Shri. D.K. Trivedi, Advocate for the Appellant

Shri. Prakash Kumar Singh (Authorized Representative) for the Respondent

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

Final Order No. A/ 11125 /2022

DATE OF HEARING: 06.09.2022
DATE OF DECISION: 14.09.2022

RAMESH NAIR

The present appeal is directed against order in appeal No. KDL-CUSTM-000-APP-097-18-19, dated 31.09.2019 whereby the Learned Commissioner (Appeals) dismissed the appeal on the ground of time bar as the finding of the Commissioner (Appeals) is: the appeal was filed after 90 days, considering the date of order/ letter as 11.01.2016 and 01.08.2016.

2. Shri Devashish K. Trivedi, learned counsel appearing on behalf of the appellant submits that the appellant has challenged the letter dated 03.05.2018 and accordingly, the date of communication of the said letter was declared as date of Communication in appeal as 10.05.2018. Accordingly, the appeal was filed well within the time and considering the letter dated 03.05.2018 as the impugned order before the Commissioner (Appeals), the appeal should have been decided on merit instead of dismissing on limitation.

3. Shri Prakash Kumar Singh, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that even as per letter dated 03.05.2018 the matter was already disposed of vide earlier letter dated 11.01.2016 and 01.08.2016, therefore, the Commissioner (Appeals) has rightly considered these letters and dismissed the appeal on limitation.

4. We have carefully considered the submission made by both the sides and perused the records.

5. We find that the appeal filed before the Commissioner (Appeals) was against the letter dated 03.05.2018. The relevant appeal form CA-1 reproduced below:

1. No..... of.....2018

2.	Name and Address of the Appellant.		M/s. Uniworld Sugar Pvt. Ltd., Survey No. 145. Village-Versamdei Taluka-Anjar-370 110. Dist. Bhuj, (Kutchh), Gujarat.
3.	Designation and address of the officer passing order appealed against and the date of the Decision or order		Deputy Commissioner (Exports), Custom House, Kandla, Office of the Commissioner Customs, Custom House, Kandla, New Custom Building, Nr. Balaji Temple, Kandla, Kutchh, Gujarat.
4.	Date of Communication of the decision or order appealed against		10/05/2018
5.	Address to which Notice may be sent to the Appellant	:	1 M/s. Uniworld Sugar Pvt. Ltd., Survey No. 145, Village-Versamdei, Taluka-Anjar - 370 110. Dist. Bhuj (Kutchh), Gujarat. 2 Devashish K. Trivedi, Advocate D/307, Ganesh Meridian, Opp. Gujarat High Court, S.G. Highway, Sola, Ahmedabad-3800 60
	Whether duty or Penalty or both is deposited; if not whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished)	:	N. A.
	Whether the Appellants wishes to be heard in person.	:	Yes, the Appellant wishes to be heard in person.
	Relief claimed in appeal	:	The Appellants request to kindly set aside the impugned decision / order issued vide letter F. No. S/14-92

			/Export/Uniworld/15-16 03/05/2018, as well as letters/decisions/orders dtd. 11/01/2016 and 01/08/2016 and kindly allow this appeal directing the competent authority to carry out conversion from draw back to advanced authorization in regard to shipping bills as mentioned in the prayer of this appeal.
--	--	--	--

From the above, it can be seen that though the appellant had been corresponding with the department on the issue on merit and department has responded vide letter dated 11.01.2016 and 01.08.2016 but the appellant preferred the appeal against the letter dated 03.05.2018 and in a column 4 i.e. date of communication was mentioned as 10.05.2018. In this fact, the learned Commissioner (Appeals) should have decided the appeal considering the letter dated 03.05.2018, if this be so, then the appeal was not time barred, therefore, in our considered view, the Commissioner (Appeals) ought to have decided the appeal on the basis of letter dated 03.05.2018 and dismissing the appeal on ground of time bar is not proper. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide the appeal keeping in mind, letter dated 03.05.2018 as impugned letter. Needless to say that the Learned Commissioner (Appeals) is free to consider the facts contained in letter dated 11.01.2016 and 01.08.2016 on merit. We also make it clear that the Learned Commissioner (Appeals) is free to consider all the proceedings related to this case. Accordingly, the appeal is disposed of by way of remand to the Commissioner (Appeals).

(Pronounced in the open court on 14.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)