CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70139 of 2021

(Arising out of Order-in-Appeal Nos.NOI-CUSTM-000-APP-808-20-21 dated 21/10/2020 passed by Commissioner (Appeals) Customs, Central Goods & Service Tax, Noida)

M/s Vimal Plast (India) Pvt. Ltd., ...Appellant
(Plot No.3, Udyog Vihar, Noida)

VERSUS

Commissioner of Customs, Noida ....Respondent

(Concor Bhawan, Container Depot, Noida)

WITH

Customs Appeal No.70140 of 2021

(Arising out of Order-in-Appeal Nos.NOI-CUSTM-000-APP-808-20-21 dated 21/10/2020 passed by Commissioner (Appeals) Customs, Central Goods & Service Tax, Noida)

M/s Vimal Plast (India) Pvt. Ltd., ...Appellant
(Plot No.3, Udyog Vihar, Noida)

VERSUS

Commissioner of Customs, Noida ....Respondent

(Concor Bhawan, Container Depot, Noida)

APPEARANCE:

Shri Ved Prakash Batra, Consultant for the Appellants
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70654-70655/2024

DATE OF HEARING : 11 July, 2024
DATE OF DECISION : 11 July, 2024

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Appeal Nos.NOI-CUSTM-000-APP-808-20-21 dated 21/10/2020 passed by Commissioner (Appeals) Customs, Central Goods & Service Tax, Noida. By the impugned order, following has been held:-

> *"7. On perusal of the condonation of delay application, I find that the appellant themselves accepted that the appeal has been filed beyond the period of limitation which is 60 days from the relevant date. It is not disputed that there was a condonation of delay application which requested for condonation from 24.02.2020 till the date of filing this appeal on 02.06.2020. On this issue, I find that the Hon'ble Supreme Court in their suo moto WP(C) 3/2020 dated 23.03.2020 on the issue of period of limitation, the Hon'ble Supreme Court categorically held that "their order only pertains to the period of limitation for filing appeals because of the pandemic situation and not for the purpose of extending the period for condonation of delay". The Supreme Court held that the period of limitation was extended by them only and not the period upto which delay can be condoned in exercise of discretion conferred by the statute.*
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> *8. In view of this decision of the Hon'ble Supreme Court, I find that the period of limitation expired on 24.02.2020, and the delay in filing the appeal was much beyond the period of 30 days (actually filed on 02.06.2020). In view of the factual situation, the condonation of delay application cannot be entertained and as the decision of the Hon'ble Supreme Court on the issue is binding, I find that the appeal is time barred."*

2.0 From perusal of the impugned order, it is evident that the appeal filed by the revenue before Commissioner (Appeals) has been dismissed even without examining the issue in respect of condonation of delay in filing of appeal before Commissioner (Appeals). Admittedly, the appeal was to be filed on 24.02.2020 and the appeal was filed on 02.06.2020. For that period appellant had filed the appeal with application for condonation of delay at the time of filing of appeal before Commissioner (Appeals).

3.0 I have heard Shri Ved Prakash Batra learned Counsel appearing for the appellants and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Undisputedly, the normal period of limitation for filing appeal before Commissioner (Appeals) was till 24.02.2020 and appellant have filed the appeal alongwith the application for condoning of delay beyond the normal period as prescribed in law. Commissioner (Appeals) after examining the grounds stated in the condonation of delay application he could have condoned the delay of only 30 days.

4.3 In the present case, appellants has been filed appeal on 02.06.2020, during this period of delay there was pandemic situation in the country and Hon'ble Supreme Court in their suo moto WP(C) 3/2020 dated 23.03.2020 has observed as follows:-

> *1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to*

the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

> *1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.*
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> *2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.*
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> *3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
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> > *4. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications,*

> *including for legal purposes, and educational and job-related requirements."*

4.4 As per the above decision by Hon'ble Supreme Court, after taking note of pandemic condition prevailing in the country during the period starting from 15.03.2020 has provided that the appeals should have been allowed to be filed even if the period of limitation would have expired. After that date the period of limitation available to the appellant alongwith the application of condonation of delay would have expired on 27.03.2020. It is observed by Hon'ble Supreme Court, do not makes any distinction between the appeal to be filed within the normal period of limitation or to be filed alongwith the condonation of delay. During the period of pandemic, it was expected that liberal views should have been taken and appeal to be considered on merits as in the light of decision by Hon'ble Supreme Court.

4.5 In view of the above, impugned order is set aside and matter is remanded back to Commissioner (Appeals) for decision of merits.

5.1 Appeals are allowed by way of remand to Commissioner (Appeals).

5.2 As the matter is quite old Commissioner (Appeals) to decide the matter within three months from the receipt of this order.

(Operative part of order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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