IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/70399/2016-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0152-15-16 dated 16/11/2015 passed by Commissioner of Central Excise & Service Tax (Appeals), Noida)

M/s A S Exports,	**Appellant**
Vs.	
Commissioner of Customs, Dadri	**Respondent**

Appearance:

Shri Mohammad Faraz Anees, Advocate	for Appellant
Shri Shiv Pratap Singh, Deputy Commissioner (AR),	for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	13/11/2018
Date of Decision	:	13/11/2018

FINAL ORDER NO-**72590 / 2018**

Per: Archana Wadhwa

After hearing both the sides, we find that Commissioner (Appeals) has rejected the appellant's appeal on the ground of time-bar, inasmuch as, the appeal was filed by the appellant even after the condonable period of 30 days, for which the Commissioner (Appeals) has no powers to condone the delay in terms of the provisions of Section 128 of the Customs Act.

2. The impugned order was passed by the Original Adjudicating Authority on 31.12.2014 and an appeal was filed there against before Commissioner (Appeals) on 22.04.2015. It is seen that though the revenue took stands before the Commissioner (Appeals) that the order of Original Adjudicating Authority was served to the assessee's representative on 31.12.2014 itself, in terms of the dispatch register, but the Commissioner (Appeals) has not accepted the said date as the date of service, inasmuch as there were no signature available, acknowledging the receipt of the Order of Commissioner. However, he has referred to a letter of assessee himself dated 19.01.2015 addressed to the Joint Commissioner of Customs, wherein he has drawn his attention to para (b) of Order-in-Original dated 31.12.2014. From the said letter he has concluded that the date of receipt of the impugned order before him was on or before 19.01.2015. As such, by taking the date of receipt of the order as 19.01.2015, he concluded that the appeal should have been filed by 19.04.2015, including the delayed period of 30 days, whereas the same has been filed on 22.04.2015. As he has no power to condone the delay beyond the period of 30 days, he rejected the appeal on limitation.

3. On going through the impugned order, we find that Commissioner (Appeals) has been very fair. Instead of taking the date of dispatch of the order, he has referred to a

subsequent letter of appellant being letter dated 19.01.2015 and has taken the said date as the date of receipt. We note that even though the impugned order might have been received by the assessee prior to said date but even if the date of communication is taken from 19.01.2015, the appeal stands filed with a delay of 33 days. The legal issue as to whether Commissioner (Appeals) can powers to condone the delay beyond the period of 30 days, stands decided by the Hon'ble Supreme Court in the case of M/s Singh Enterprises Vs CCE Jamshedpur reported at 2008 (221) E.L.T. 163 (SC) laying down that the Commissioner (Appeals) has no power to condone the delay beyond the period prescribed under the Act.

4. As such, we find no infirmity in the impugned order of Commissioner (Appeals). Accordingly, the appeal is rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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