

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

APPEAL No. ST/55749/2014-CU[DB]

(Arising out of C. No. 05/App1/Misc/Gr A/2012/1292 dated 16/09/2014 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Premier Car Sales Ltd.

Appellant

Vs.

**Commissioner, Customs, Central Excise &
Service Tax, Kanpur**

Respondent

Appearance:

Shri Dharmendra Srivastava (CA)

for Appellant

Shri Mohd Altaf (Assistant Commissioner) AR

for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 04/12/2018

Date of Decision : 04/12/2018

FINAL ORDER NO 72767 / 2018

Per: Archana Wadhwa

After hearing both the sides we find that the Superintendent (Appeals) vide his letter dated 16.09.2014 addressed to the appellant has returned the appeal filed before Commissioner (Appeals) by observing as under:-

“On examination of the subject appeal, it has been observed that the appeal against the impugned order dated 20.05.2011, received by you on 04.07.2011, has been filed in

this office on 08.09.2014 i.e., after a period of more than 03 years. The delay of more than 03 years in filing the subject appeal is beyond the statutory limit. Moreover, no pre-deposit has been made in terms of Section 35F of the Central Excise Act, 1944 substituted by Finance Act, (No.2) of 2014 w.e.f. 06.08.2014.

Therefore, the subject appeal being time barred is returned herewith, in original.”

2. Learned Chartered Accountant appearing for the appellant submits that the appeal against impugned Order-in-Original dated 20.05.2011 was filed by them in the office of the Assistant Commissioner, Lucknow, inadvertently by the person who went there to file the same instead of filing in the office of Commissioner (Appeals), Lucknow. He clarifies that the said mistake occurred inasmuch as both the offices are located at the same place and the person who went to file the appeal wrongly filed it in the Office of the Assistant Commissioner.

3. As they did not hear anything from the Office of Commissioner (Appeals) for a period of more than three years they addressed a letter to his office and came to know that the appeal was not available in his office. Accordingly, they filed a copy of the appeal again on 31 October, 2014 with request to Commissioner (Appeals) to dispose of the same.

Instead of disposing the appeal, they received the above letter from the Office of the Superintendent (Appeals).

4. First of all we note that Superintendent (Appeals) has no power to adjudicate upon the appeal and dismiss or reject the same on the point of time bar. To reject the appeal on time bar is not a technical defect but is required to be adjudicated upon by appreciating the various submissions made by the assessee or the various factors involved in the matter. As such we agree with the learned Chartered Accountant that Superintendent (Appeals) lacked the jurisdiction to decide or to reject the appeal on time bar and it was for Commissioner (Appeals) to decide as to whether there was any delay in filing the appeal.

In any case and in any view of the matter if the Appellate Authority would have give a hearing to the appellant before dismissal of his appeal as time barred, all the above facts could have been explained to him. Having not done that, we are of the view that the matter needs to be remanded to Commissioner (Appeals) for decision on the issue of time bar. Appellants are at liberty to place all the evidence on record to show that the appeal stands wrongly filed in the Office of the Assistant Commissioner and Commissioner (Appeals) would also verify the said fact of filing and pendency of appeal in the office of the Assistant Commissioner.

5. Before we part, we would like to mention that if the appeal was actually filed by the appellant in the office of the Assistant Commissioner, who in any case should have forwarded the same to Commissioner (Appeals) and was pending for three years in his office, the time period for which the appeal was pending in the office of the Assistant Commissioner is required to be excluded from consideration for the purpose of limitation in terms of Section 14 of the Limitation Act.

6. In view of the above we direct the Commissioner (Appeals) to decide the issue afresh in the light of the observation made as above.

7. Appeal is allowed by way of remand.

(Dictated and pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)