CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 70081 of 2018-[Division Bench]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-810-2017-18 dated 31/08/2017 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Panasonic AVC Networks India Co. Ltd……Appellant

(C-52, Phase-II, Noida-6)

VERSUS

Commissioner of Central Excise, ….Respondent

(Noida-i)

APPEARANCE:

Shri Rajesh Kumar, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.-71114/2019

Date of Hearing : 24/05/2019
Date of Decision : 24/05/2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Rajesh Kumar learned Advocate appearing for the appellant and Shri Gyandendra Kumar Tripathi, Assistant Commissioner, learned Authorised Representative appearing for the Revenue, we find that the Commissioner (Appeals) has rejected the appeal of the assesse on the question of time bar. He observed that the impugned order was passed on 27.09.2016 and as per the date of communication shown by the appellant in EA-I form, the same was received on 28.10.2016. He further observed that however in the grounds of appeal the assessee has stated that the date of communication was 28.09.2016. As such, he observed that inasmuch as the appeal was filed on 28.12.2016 there was a delay of one day in filing the appeal. He rejected the appeal on the ground of limitation by observing that the appellants has not filed any condonation of delay application.

2. As such, it is seen that by treating the delay as delay of one day, he has rejected the appeal as barred by limitation on the sole ground that there was no application for condonation of delay.

3. However, we note that the appeal was heard only on merits and the fact that there was delay in filing the appeal was not brought to his notice. Otherwise also, we find that according to order of Commissioner (Appeals) the last date of filing of the appeal was 27.12.2016 wherein it was filed on 28.12.2016. In terms of provisions of Section 9 of the General Clauses Act, 1897 dealing with the commencement and termination of the period of limitation, it stands prescribed that either the date of the receipt or the date of filing has to be excluded and limitation have to be counted accordingly. In any case and in any view of the matter, we find that there is a delay of one day only, which Commissioner (Appeals) has powers to condone. Accordingly, we condone the same, remand the matter to Commissioner (Appeals) to re-decide on merits.

4. Appeal is disposed of in above manner.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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