CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20252 of 2016

(Arising out of Order-in-Appeal Nos. 12 to 16/2016 dated 14.01.2016 passed by the Commissioner of Customs (Appeals), Bengaluru)

M/s. M.M. Saw Mills & Industries
Adooparambu, Muvattupuzha
Ernakulam, Kerala - 686 661. ....**Appellant**

VERSUS

Commissioner of Customs & Service Tax, Bangalore
C.R. Building, Queens Road
P.B. No. 5400
Bangalore – 560 001 ....**Respondent**

Appearance:

Mr. M. Balagopal, Advocate for the Appellant
Mr. K. Vishwanath, AR for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20885 /2024

Date Of Hearing: 20.03.2024
Date Of Decision: 19.09.2024

Per: Pullela Nageswara Rao

M/s. M.M. Saw Mills and Industries, the appellant filed two Bills of Entry dated 01.02.2002 for clearance of 'Timber Logs' and claimed exemption under Notification No. 102/2007-Cus. dated 14.09.2007 as amended by Notification No. 93/2008-Cus. Dated 01.08.2008. The appellant filed refund claim of 4% SAD. The adjudicating authority sanctioned part of the refund following the conversion of 1 Hoppus Ton=1.8027 CBM, as per Public Notice No. 21/2012 dated 11.05.2012 issued by Commissioner of Customs, Mangalore, instead of 1 Hoppus

Ton=1.416 CBM adopted at the time of import. Aggrieved by the order, the appellant filed an appeal before Commissioner (Appeals). Commissioner (Appeals) vide Order-in-Appeal No.12-16/2016 dated 14.01.2016, inter alia decided on the issue of the conversion of 'Timber Logs' using the conversion ratio of 1 Hoppus Ton=1.416 CBM, since at the time of import this conversion formula was adopted, the same should be adopted for sanction of SAD. However, as regards the appellant, Commissioner (Appeals) has rejected the appeal on the ground that the appeal was filed with a delay of 22(twenty two) days after the statutory time of 60(sixty) days to file an appeal before Commissioner (Appeals). Aggrieved by the rejection of the appeal on the grounds of delay, the appellant has filed this appeal before the Tribunal.

2. In the appeal, the appellant contended that; 22 days delay is condonable by the Commissioner (Appeals) and it is within the condonable period of 30 days as provided under proviso to Section 128(1) of the Customs Act, 1962; the appeal was rejected only for the reason that sufficient cause was not shown by the appellant for delay in filing the appeal; the appellant has submitted before the Commissioner (Appeals) that the delay in filing the appeal was due to the reason that the authorized person was unable to attend the office due to some personal reason and the delay was not due to any wilful negligence on the part of the appellant and that they have a strong case on merit; the appellant has placed reliance on the decision in the case of **Sun Pharmaceuticals Industries Ltd. Vs. Commissioner of C. Ex. & S.T., Vadodara reported in 2015 (316) E.L.T. 286 (Tri.-Ahmd.),** wherein the Tribunal has allowed the delay of 16 days and remanded to

the first appellate authority for adjudication on merit; in the case of **Shiva Mint Industries Vs. C.Ex., Jalandhar reported in 2010 (262) E.L.T. 397 (Tri.-Del.),** wherein the delay was condoned and matter remitted back to Commissioner (Appeals) for dealing the matter according to law.

3. The learned Authorized Representative for the Revenue contended that the cause shown for delay in filing the appeal is not convincing and hence, the appeal should be rejected. In this regard, he has cited the decision in the case of **DHR Holdings India Pvt. Ltd. Vs. CC, New Delhi reported in 2024 (3) TMI 413-CESTAT-New Delhi.**

4. Heard both parties and perused the records.

5. We find that the reason adduced for delay in filing the appeal by the appellant is plausible and we find that the delay is condonable and it is within the condonable powers of the Commissioner (Appeals).

6. In view of the above, the delay in filing the appeal is condoned and the case is remanded to the Commissioner (Appeals) for deciding the matter on merits after giving reasonable opportunity to the appellant to present their case.

(Order pronounced in open court on 19.09.2024)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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