# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

## Customs Appeal No. 20321 of 2015

(Arising out of Order-in-Appeal No. 460 & 461/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals), Bengaluru.)

**M/s. Aditya Birla Nuvo Limited**
Regent Insignia, Municipal No. 414,
100 Feet Road, IV Block, Koramangala,
Bangalore – 560 095.

Appellant(s)

*VERSUS*

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

Respondent(s)

**WITH**

## Customs Appeal No. 20323 of 2015

(Arising out of Order-in-Appeal No. 460 & 461/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals), Bengaluru.)

**M/s. Aditya Birla Nuvo Limited**
Regent Insignia, Municipal No. 414,
100 Feet Road, IV Block, Koramangala,
Bangalore – 560 095.

Appellant(s)

*VERSUS*

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

Respondent(s)

**APPEARANCE:**

None for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20908 - 20909 / 2024**

DATE OF HEARING: 19.09.2024
DATE OF DECISION:19.09.2024

**PER : D.M. MISRA**

None present for the appellant.

2. The matter has been rolling since 30.1.2024. Learned Authorized Representative (AR) for the Revenue furnishing the dates of hearing, submitted that the matter was adjourned on 26.02.2024, 27.03.2024, 22.04.2024, 30.05.2024, 20.06.2024, 12.07.2024, 12.08.2024 and today 19.09.2024; on these occasions, none appeared for the appellant. He submits that the issue involved in this appeal lies in a very narrow compass. He has further submitted that the Ld. Commissioner (Appeals) has not decided the issue on merits and dismissed the appeal on the ground that the same were filed on 24.05.2012 beyond the time limit prescribed for filing appeal under the Customs Act, 1962 including the condonable limit against the Orders-in-Original dated 6.12.2018 and 29.11.2010. He submits that on appeal before the Tribunal, Tribunal remanded the matter with a specific direction to provide an opportunity to the appellant to present their case so as to establish that the appeals were filed on 06.01.2011 and not on 24.05.2012 vide Final Order No. 20210-20211/2014 dated 10.02.2014. Inspite of the remand order, the appellant could not place evidences establishing their claim that appeals were filed in time. Consequently, the learned Commissioner (Appeals) has rejected the appeals on the basis of

the records available holding that the appeals were filed only on 24.05.2012, hence beyond the statutory limit of sixty days and condonable limit of 30 days prescribed under Section 128 of the Customs Act, 1962.

3. We have considered the submissions of the learned Authorized Representative (AR) for the Revenue. Since, the matter has been rolling without any valid reasons but only for non-appearance on behalf of the appellant, the same is taken up for disposal on merit.

4. We find that this is a second round of litigation before this Tribunal. In the initial round on the basis of the argument of the appellant disputing the date of filing of the appeal as 6.1.2011 instead of 24.05.2012 held by the learned Commissioner (Appeals), this Tribunal remanded the matter to the learned Commissioner (Appeals) to decide the issue afresh after affording an opportunity of hearing to the appellant. The appellant, however, could not place any evidence to establish their claim that the appeals were filed on time i.e., 06.01.2011. Consequently, the learned Commissioner (Appeals) rejected the appeal on the ground of limitation observing as follows:

> "6. It is a fact admitted by the appellants that they received the impugned orders on 02.12.2010 and 25.11.2010. The appellants have stated that they filed the appeal against the impugned orders on 06.01.2011. The appellants have not produced any proof/acknowledgement for having filed the appeals on 06.01.2011 with this office during the original proceedings. As directed by the Hon'ble CESTAT the appellants were given an opportunity on 21.10.2014 to present their case. The appellants again failed to produce any proof/acknowledgment for having filed the appeals on 06.01.2011 with this office. Also, it is verified and ascertained from the records available in

this office that no appeal has been received earlier i.e., on 06.01.2011 as claimed by the appellants against the impugned orders in this office. The appeals have been filed on 24.05.2012. As per first proviso to Section 128 of the Act, the appeal has to be filed within sixty days from the date of communication of the decision or order and on sufficient cause which prevented from presenting the appeal within the period of sixty days, the Commissioner (Appeals) may allow further period of thirty days to present the appeal. In the instant case, the appeals are filed after more than one year and the delay is beyond the condonable period in terms of the powers vested in me under the provisions of the Section 128 of the Act and beyond the condonable authority of Commissioner (Appeals)."

5. We find that before this Tribunal also, the appellant could not substantiate through evidence that the appeals have been filed in time. Consequently, the impugned order is upheld and the appeals are dismissed.

(Dictated and pronounced in Open Court.)

**(D.M. MISRA)**
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

hr/rv