

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Application(s) Involved:

C/COD/20468/2018 in C/20725/2018-SM

Appeal(s) Involved:

C/20725/2018-SM

[Arising out of Order-in-Appeal No.35/2016 dated 21/01/2016
passed by Commissioner of CUSTOMS, BANGALORE-I (Appeal).]

M/s. Miven Mayfran Conveyors Pvt. Ltd.

Sirur Compound, Karwar Road,
HUBLI - 580024
KARNATAKA

Appellant(s)

Versus

**Commissioner Of Central Tax,
Bangalore Custom**

C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
Bangalore - 560001
Karnataka

Respondent(s)

Appearance:

**Mr. B. Venugopal, Advocate
SWAMY ASSOCIATES**

G-8, FORTUNA ICON, APARTMENTS, JODIDAR
ASHWATHAPPA FARM, SAHAKARA NAGAR,
BANGALORE 560 092

For the Appellant

Mr. Pakshirajan, AR

For the Respondent

Date of Hearing: 20/06/2018

Date of Decision: 20/06/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20838 / 2018

Per : S.S GARG

The applicant has filed an application seeking
condonation of delay of 751 days in filing the present appeal. The

applicant has further stated that they received the impugned Order-in-Appeal No.35/2016 dated 21.1.2016 on 28.1.2016 and as per the provisions of Section 129A of the Customs Act, 1962, the applicant was required to file the appeal within three months from the date of communication of the said Order-in-Appeal i.e., on or before 27.4.2016. However, the present appeal was filed on 18.5.2018 after a delay of 751 days. The applicant has further averred that the reasons for the delay is that the applicant submitted necessary documents for obtaining the Export Obligation Discharge Certificate (EODC) towards the fulfillment of export obligation and closure of said advance license and was consistently following up with the JDGFT authorities in Bangalore and DGFT authorities at New Delhi. But due to non-submission/non-filing of bill of export, the DGFT authorities delayed the process which has resulted delay in filing the present appeal. The applicant has also given the details of various letters written by the applicant to JDGFT as well as DGFT authorities for obtaining the EODC certificate.

2. Heard both the parties and perused the records.
3. The learned counsel for the applicant submitted that the delay in filing the present appeal is not deliberate and intentional but was on account of the fact that they were pursuing

the matter before the JDGFT and DGFT and on account of this, they could not file the appeal in time. He further submitted that the delay caused in filing the present appeal is beyond their control and therefore, the same may be condoned in the interest of justice. In support of his submissions, he relied upon the following decisions:

- *Collector, Land Acquisition Anantnag & Another vs. MST. Katiji and Others: 1987 (28) ELT 185 (SC).*
- *Bhag Singh & Others vs. Major Daljit Singh and Others: 1987 (32) ELT 258 (SC)*
- *N. Balakrishnan vs. M. Krishnamurthy: 2008 (228) ELT 162 (SC)*
- *Franklin Instruments Maintenance and Erection Tech Pvt. Ltd. vs. CCE: 2017 (7) GSTL 390 (Mad.)*
- *Chandrabhan Singh vs. CCE: 2017 (357) ELT 149 (Guj.)*
- *Prachi Silks vs. CESTAT, Chennai: 2017 (346) ELT 527 (Mad.)*

4. On the other hand, the learned DR has vehemently contested the application and submitted that there is a gross negligence on the part of the applicant in filing the appeal. He further submitted that the applicant received the Order-in-Appeal on 28.1.2016 and was supposed to file the appeal on or before 27.4.2016 but he filed the appeal only on 18.5.2018, which is filed after an inordinate delay of 751 days. He further submitted that when the applicant can pursue the matter before the JDGFT and DGFT for issuance of EODC certificate, then there was no reason to prevent him from filing the appeal in time.

5. After considering the submissions of both the parties and perusal of the material on record, I find that admittedly the impugned order was received by the applicant on 28.1.2016 and the appeal could have been filed within three months from the date of communication of the Order-in-Appeal but the applicant filed the appeal only on 18.5.2018 and the only reason for such an inordinate delay in filing the appeal is that he was pursuing his matter before the JDGFT and DGFT authorities for obtaining the EODC certificate. Further, I find no reason as to why he did not file the appeal in time when he can pursue his matter before JDGFT and DGFT then he could have filed the appeal in time before this Tribunal also. Further, I find that the decisions relied upon by the applicant are not applicable in the facts and circumstances of the present case because in the present case, in my considered opinion, the applicant has been grossly negligent in filing the present appeal after a delay of 751 days and therefore, I am not inclined to condone the delay of 751 days in filing the present appeal. Consequently, I dismiss the COD application and as a result of it, the appeal is also dismissed.

(Operative portion of the Order was pronounced
in Open Court on **20/06/2018**)

S.S GARG
JUDICIAL MEMBER

rv...