CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 20992 of 2019

[Arising out of Order-in-Appeal No. 129/2019 dated 23/09/2019 passed by the Commissioner of CUSTOMS, BANGALORE-I (Appeals)]

M/s. Saraf Fincom Pvt Ltd **....Appellant**
No 37/12-1 Archana Complex 4th Cross Lalbagh Road
BENGALURU - 560027
KARNATAKA

VERSUS

Commissioner of Customs Bangalore-CUS **....Respondent**
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

WITH

Customs Appeal No. 20993 of 2019

[Arising out of Order-in-Appeal No. 128/2019 dated 23/09/2019 passed by the Commissioner of CUSTOMS, BANGALORE-I (Appeals)]

M/s. Chakrapani Vyapar Pvt Ltd **....Appellant**
No 37/12 2nd Floor Archana Complex 4th Cross Lalbagh Road
BENGALURU - 560027
KARNATAKA

VERSUS

Commissioner of Customs Bangalore-CUS **....Respondent**
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

APPEARANCE:

Shri B.N. Gururaj, Advocate for the Appellant
Shri P.Gopakumar, Authorized Representative for the Respondent

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

Final Order No. 20058-20059 / 2021

DATE OF HEARING: 05.03.2021
DATE OF DECISION: 05.03.2021

PER: S.S GARG

The appellants have filed these two appeals against the impugned orders both dated 23.09.2019 whereby the learned Commissioner (Appeals) has refused to condone the delay of 21 days in filing the appeals and dismissed both the appeals being not maintainable. Since the issue in both the appeals is identical and the ground on which the impugned order has been passed is identical therefore both the appeals are taken up together for discussion and disposal. For the sake of convenience, I have taken the facts of Appeal No. 20992/2019.

2. Briefly the facts of the present case are that the appellant is a Private Limited Company engaged in the business of trading in plastic granules of various grades and specifications, both imported and indigenous. On the basis of Notification No.102/2007-CUS dated 14.09.2007, the appellant filed refund claim dated 05.02.2009 with all the supporting documents however a SCN dated 12.12.2011 was issued to the appellant for rejecting refund claim. After following the due process, the Original Authority rejected the refund and aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals), vide the impugned order, has refused to condone the delay of 21 days and rejected the appeal of the appellant being not maintainable. Hence the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the grounds for seeking condonation. He further submitted that there was delay of 21 days in filing the appeal before the Commissioner which was within his condonable power but he choose not to exercise the discretion of condoning the delay and rejected the appeal. He further submitted that as per the proviso to Section 128 (1) of the Customs Act, 1962, the Commissioner (Appeals) has been given power to condone the delay if the Commissioner comes to the conclusion that there were sufficient reasons preventing the appellant to file the appeal within the period of 60 days. Learned Counsel further submitted that the reason given in the COD application seeking condonation of delay was that initially the appellant decided not to file the appeal being the amount involved was small but thereafter apprehending that conceding non-grant of interest in one case may affect other similar cases involving higher stakes, the appeal was filed with COD application. He further submitted that delay was not intentional and no advantage accrued to the appellant by this delay. He also submitted that by condoning this delay and admitting the appeal and deciding the appeal on merit would have caused no prejudice to the Revenue. He also submitted that the issue involved in the present appeal is only claim of interest on delayed refund which has been settled by the Hon'ble Apex Court in the case of ***Ranbaxi Laboratories Ltd. Vs UOI, 2011 (273) ELT 3 (SC)*** and also by the Hon'ble High Court of Karnataka in the case of ***CC, Airport Vs Pfizer Products India Pvt. Ltd., 2015 (324) ELT 259 (Kar.).***

5. On the other hand, learned AR reiterated the findings of impugned order.

6. After considering the submission of both the parties and perusal of the material on record, I find that the dispute in the present appeals arises from the claim of interest under Section 27A of the Customs Act, 1962 on delayed grant of refund of SAD on the imported plastic granules sold by them domestically. Further, I find that Tribunal vide its Final Order No.21646-21648/2018, dated 12.10.2018 allowed the appeal of the appellant with consequential relief and by following the said order, the Original Authority

granted the refund but did not grant the interest and when the appeal against the refusal to grant the interest was filed before the Commissioner, the learned Commissioner did not decide the appeal on merits and rejected the appeal of the appellant on time bar. Further, I find that the reasons given by the appellant is quite convincing and moreover there was a delay of only 21 days which was within the condonable power of the Commissioner (Appeals) and the Commissioner (Appeals) should have exercise his power by condoning the delay and decided the appeal on merits. Further, I find that the delay of 21 days in filing the appeal before Commissioner (Appeals) is not an inordinate delay and is not intentional and the appellant does not stand to gain anything by filing the appeal with the delay and the approach of the various Courts is that the delay should be liberally condoned and matters should be decided on merits.

7. In view of this, I am of the opinion that declining to condone the delay of 21 days is not justified and the same is not sustainable in law and hence, I set aside the impugned orders and condone the delay of 21 days in filing the appeal before the Commissioner and remand both the matters to the learned Commissioner with a direction to decide the same on merit within a period of one month from the date of receipt of this order after following the principles of natural justice.

(Order pronounced in the open court on 05/03/2021)

(S.S GARG)
JUDICIAL MEMBER

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